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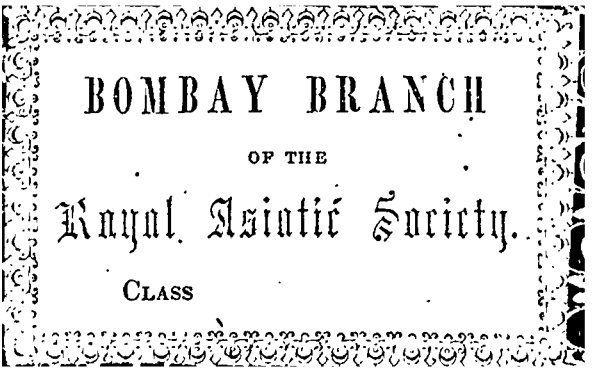

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VIEW

OF THE

STATE OF EUROPE

DURING

THE MIDDLE AGES.

IN THREE VOLUMES.

By HENRY HALLAM, Esq.

Ἐκ Χάεος δ' Ἐρεβός τε μέλαινά τε Νὺξ ἐγένοντο·
Νυκτὸς δ' αὖτ' Αἰθήρ τε καὶ Ἡμέρη ἐξεγενόντο.

ΗΣΙΟΔΟΣ.

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CHAP. VIII. PART III. ENGLISH CONST. Accession of Edward I.

THOUGH the undisputed accession of a prince, like Edward the First, to the throne of his father, does not seem so convenient a resting-place in history, as one of those revolutions which interrupt the natural chain of events, yet the changes wrought during his reign make it properly an epoch in the progress of these inquiries. And, indeed, as ours is emphatically styled a government by king, lords and commons, we cannot perhaps in strictness carry it farther back than the admission of the latter into parliament; so that, if the constant representation of the commons is to be referred to the age of Edward the First, it will be nearer the truth to date the English constitution from that than from any earlier æra.

The various statutes affecting the law of property and administration of justice, which have caused Edward I. to be named, rather hyperbolically, the English Justinian, bear no immediate relation to our present inquiries. In a constitutional point of view, the principal object is that statute, entitled the Confirmation of the Charters, which was very reluctantly conceded by the king

Confirmation of the charters.

in the twenty-fifth year of his reign. I do not know that England has ever produced any patriots to whose memory she owes more gratitude than Humphrey Bohun, earl of Hereford and Essex, and Roger Bigod, earl of Norfolk. In the Great Charter the base spirit and deserted condition of John take off something from the glory of the triumph, though they enhance the moderation of those who pressed no farther upon an abject tyrant. But to withstand the measures of Edward, a prince unequalled by any who had reigned in England since the Conqueror for prudence, valour and success, required a far more intrepid patriotism. Their provocations, if less outrageous than those received from John, were such as evidently manifested a disposition in Edward to reign without any controul; a constant refusal to confirm the charters, which in that age were hardly deemed to bind the king without his actual consent; heavy impositions, especially one on the export of wool, and other unwarrantable demands. He had acted with such unmeasured violence towards the clergy, on account of their refusal of further subsidies, that, although the ill-judged policy of that class kept their interests too distinct from those of the people, it was natural for all to be alarmed at the precedent of despotism.* These encroachments made

* The fullest account we possess of these domestic transactions from 1294 to 1298 is in Walter Hemingford, one of the historians edited by Hearne. p. 52—168. They have been vilely perverted by Carte, but extremely well told by Hume, the first writer who had the merit of exposing the character of Edward I. See too Knyghton, in Twysden's Decem Scriptores, col. 2492.

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resistance justifiable, and the circumstances of Edward made it prudent. His ambition, luckily for the people, had involved him in foreign warfare, from which he could not recede without disappointment and dishonour. Thus was wrested from him that famous statute, inadequately denominated the Confirmation of the Charters, because it added another pillar to our constitution, not less important than the Great Charter itself.*

It was enacted by the 25 E. I. that the charter of liberties, and that of the forest, besides being explicitly confirmed,† should be sent to all sheriffs, justices in eyre, and other magistrates throughout the realm, in order to their publication before the people; that copies of them should be kept in cathedral churches and publicly read twice in the year, accompanied by a solemn sentence of excommunication against all who should infringe them; that any judgement given contrary to these charters should be invalid, and holden for nought. This authentic promulgation; these awful sanctions of the Great Charter, would alone render the statute of which we are speaking illustrious. But it went a great deal farther. Hitherto the king's prerogative of levying money, by name of tallage

* Walsingham, in Camden's Scriptores Rer. Anglicarum. p. 71—73.

† Edward would not confirm the charters, notwithstanding his promise, without the words, salvo jure coronæ nostræ; on which the two earls retired from court. When the confirmation was read to the people at St Paul's, says Hemingford, they blessed the king on seeing the charters with the great seal affixed: but when they heard the captious conclusion, they cursed him instead. At the next meeting of parliament, the king agreed to omit these insidious words. p. 168.

or prise, from his towns and tenants in demesne, had passed unquestioned. Some impositions, that especially on the export of wool, affected all his subjects. It was now the moment to enfranchise the people, and give that security to private property which Magna Charta had given to personal liberty. By the 5th and 6th sections of this statute "the aids, tasks, and prises" before taken are renounced as precedents; and the king "grants, for him and his heirs, as well to archbishops, bishops, abbots, priors, and other folk of holy church, as also to earls, barons, and to all commonalty of the land, that for no business from henceforth we shall take such manner of aids, tasks nor prises, but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed." The toll upon wool, so far as levied by the king's mere prerogative, is expressly released by the seventh section.*

Constitution of parliament.

We come now to a part of our subject exceedingly important, but more intricate and controverted than any other, the constitution of parliament. I have taken no notice of this in the last section, in order to present uninterruptedly to the

* The supposed statute, De Tallagio non concedendo, is considered by Blackstone, (Introduction to Charters, p. 67.) as merely an abstract of the Confirmatio Chartarum. By that intitled Articuli super Chartas, 28 Edw. I., a court was erected in every county, of three knights & others, to be elected by the commons of the shire, whose sole province was to determine offences against the two charters, with power of punishing by fine and imprisonment; but not to extend to any case wherein a remedy by writ was already provided.

reader the gradual progress of our legislature down to its complete establishment under the Edwards. No excuse need be made for the dry and critical disquisition of the following pages; but among such obscure inquiries, I cannot feel myself as secure from error, as I certainly do from partiality.

The spiritual peers.

One constituent branch of the great councils, held by William the Conqueror and all his successors, was composed of the bishops, and the heads of religious houses holding their temporalities immediately of the crown. It has been frequently maintained, that these spiritual lords sat in parliament only by virtue of their baronial tenure. And certainly they did all hold baronies, which, according to the analogy of lay peerages, were sufficient to give them such a share in the legislature. Nevertheless, I think that this is rather too contracted a view of the rights of the English hierarchy, and indeed, by implication, of the peerage. For a great council of advice and assent in matters of legislation or national importance was essential to all the northern governments. And all of them, except perhaps the Lombards, invited the superior ecclesiastics to their councils; not upon any feudal notions, which at that time had hardly begun to prevail, but chiefly as representatives of the church and of religion itself; next, as more learned and enlightened counsellors than the lay nobility; and in some degree, no doubt, as rich proprietors of land. It will be remembered also, that ecclesiastical and temporal

affairs were originally decided in the same assemblies, both upon the continent and in England. The Norman conquest, which destroyed the Anglo-Saxon nobility, and substituted a new race in their stead, could not affect the immortality of church possessions. The bishops of William's age were entitled to sit in his councils by the general custom of Europe, and by the common law of England, which the conquest did not overturn.* Some smaller arguments might be urged against the supposition, that their legislative rights are merely baronial; such as that the guardian of the spiritualities was commonly summoned to parliament during the vacancy of a bishopric, and that the five sees created by Henry VIII. have no baronies annexed to them;† but the former reasoning appears less technical and confined.‡

* Hody (Treatise on Convocations, p. 126.) states the matter thus: in the Saxon times all bishops and abbots sat and voted in the state councils, or parliament, as such, and not on account of their tenures. After the conquest the abbots sat there not as such, but by virtue of their tenures, as barons; and the bishops sat in a double capacity, as bishops, and as barons.

† Hody, p. 128.

‡ It is rather a curious speculative question, and such only, we may presume, it will long continue, whether bishops are entitled, on charges of treason or felony, to a trial by the peers. If this question be considered either theoretically, or according to ancient authority, I think the affirmative proposition is beyond dispute. Bishops were at all times members of the great national council, and fully equal to lay lords in temporal power as well as dignity. Since the conquest, they have held their temporalities of the crown by a baronial tenure, which, if there be any consistency in law, must unequivocally distinguish them from commoners; since any one holding by barony might be challenged on a jury, as not being the peer of the party whom he was to try. It is true, that they take no share in the judicial power of the house of lords in cases of treason or felony; but this is merely in conformity to those ecclesiasti-

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Next to these spiritual lords are the earls and barons, or lay peerage of England. The former

ENGLISH CONST.

cal canons, which prohibited the clergy from partaking in capital judgments, and they have always withdrawn from the house on such occasions under a protestation of their right to remain. Had it not been for this particularity, arising wholly out of their own discipline, the question of their peerage could never have come into dispute. As for the common objection, that they are not tried as peers, because they have no inheritable nobility, I consider it as very frivolous; since it takes for granted the precise matter in controversy, that an inheritable nobility is necessary to the definition of peerage, or to its incidental privileges.

If we come to constitutional precedents, by which, when sufficiently numerous and unexceptionable, all questions of this kind are ultimately to be determined, the weight of *ancient* authority seems to be in favour of the prelates. In the fifteenth year of Edward III. (1340), the king brought several charges against Archbishop Stratford. He came to parliament, with a declared intention of defending himself before his peers. The king insisted upon his answering in the court of exchequer. Stratford however persevered; and the house of lords by the king's consent appointed twelve of their number, bishops, earls, and barons, to report whether peers ought to answer criminal charges in parliament, and not elsewhere. This committee reported to the king in full parliament, that the peers of the land ought not to be arraigned, nor put on trial, except in parliament and by their peers. The archbishop upon this prayed the king, that inasmuch as he had been notoriously defamed, he might be arraigned in full parliament before the peers, and there make answer; which request the king granted. Rot. Parl. vol. ii. p. 127; Collier's Eccles. Hist. vol. i. p. 543. The proceedings against Stratford went no farther, but I think it impossible not to admit, that his right to trial as a peer was fully recognized both by the king and lords.

This is however the latest, and perhaps the only instance of a prelate's obtaining so high a privilege. In the preceding reign of Edward II., if we can rely on the account of Walsingham, (p. 119.) Adam Orleton, the factious bishop of Hereford, had first been arraigned before the house of lords, and subsequently convicted by a common jury; but the transaction was of a singular nature, and the king might probably be influenced by the difficulty of obtaining a conviction from the temporal peers, of whom many were disaffected to him, in a case where privilege of clergy was vehemently claimed. But, about 1357, a bishop of Ely, being accused of harbouring one guilty of murder, though he demanded a trial by the peers, was compelled to abide the verdict of a jury. Collier, p. 557. In the 31st of Edw. III. (1358), the abbot of Missenden was hanged for coining. 2 Inst. p. 635. The abbot of this monastery appears from Dugdale to have been summoned by writ in the 49th of Henry III. If he actually held by barony, I do not perceive any strong distinction between his case and that of a bishop. The leading precedent, however, and that upon which lawyers principally found their denial of this

dignity was perhaps less official than in the Saxon times, although the earl was entitled to the third

privilege to the bishops, is the case of Fisher, who was certainly tried before an ordinary jury; nor am I aware that any remonstrance was made by himself, or complaint by his friends, upon this ground. Cranmer was treated in the same manner; and from these two, being the most recent precedents, though neither of them in the best of times, the great plurality of law-books have drawn a conclusion, that bishops are not entitled to trial by the temporal peers. Nor can there be much doubt, that whenever the occasion shall occur, this will be the decision of the house of lords.

There are two peculiarities, as it may naturally appear, in the above-mentioned resolution of the lords in Stratford's case. The first is, that they claim to be tried, not only before their peers, but in parliament. And in the case of the bishop of Ely, it is said to have been objected to his claim of trial by his peers, that parliament was not then sitting. (Collier, ubi sup.) It is most probable, therefore, that the court of the lord high steward, for the special purpose of trying a peer, was of more recent institution; as appears also from Sir E. Coke's expressions. 4 Inst. p. 58. The second circumstance that may strike a reader is, that the lords assert their privilege in all criminal cases, not distinguishing misdemeanours from treasons and felonies. But in this they were undoubtedly warranted by the clear language of Magna Charta, which makes no distinction of the kind. The practice of trying a peer for misdemeanours by a jury of commoners, concerning the origin of which I can say nothing, is one of those anomalies which too often render our laws capricious and unreasonable in the eyes of impartial men.

Since writing the above note, I have read Stillingfleet's treatise on the judicial power of the bishops in capital cases; a right which, though now, I think, abrogated by non-claim and a course of contrary precedents, he proves beyond dispute to have existed by the common law and constitutions of Clarendon, to have been occasionally exercised, and to have been only suspended by their voluntary act. In the course of this argument, he treats of the peerage of the bishops, and produces abundant evidence from the records of parliament that they were styled peers, for which, though convinced from general recollection, I had not leisure or disposition to search. But if any doubt should remain, the statute 25 E. III. c. 6. contains a legislative declaration of the peerage of bishops. The whole subject is discussed with much perspicuity and force by Stillingfleet, who seems however not to press very greatly the right of trial by peers, aware no doubt of the weight of opposite precedents. (Stillingfleet's Works, vol. iii. p. 820.) In one distinction, that the bishops vote in their judicial functions as barons, but in legislation as magnates, which Warburton has brought forward as his own in the Alliance of Church and State, Stillingfleet has perhaps not taken the strongest ground, nor sufficiently accounted for their right of sitting in judgement on the impeachment of a commoner. Parliamentary impeachment, upon charges of high public crimes,

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penny of all emoluments arising from the administration of justice in the county-courts, and might, perhaps, command the militia of his county, when it was called forth.* Every earl was also a baron; and held an honour or barony of the crown, for which he paid a higher relief than an ordinary baron, probably on account of the profits of his earldom. I will not pretend to say, whether titular earldoms, absolutely distinct from the lieutenancy of a county, were as ancient as the conquest, which Madox seems to think, or were considered as irregular, so late as Henry II., according to Lord Lyttleton. In Dugdale's Baron-

wherein in fact both houses act judicially, seems to be the exercise of a right inherent in the great council of the nation, some traces of which appear even before the conquest; (Chron. Sax. p. 164. 169.) independent of, and superseding, that of trial by peers, which, if the 29th section of Magna Charta be strictly construed, is only required upon indictments at the king's suit. And this consideration is of great weight in the question still unsettled, whether a commoner can be tried by the lords upon an impeachment for treason.

The treatise of Stillingfleet was written on occasion of the objection raised by the commons to the bishops voting on the question of Lord Danby's pardon, which he pleaded in bar of his impeachment. Burnet seems to suppose, that their right of final judgement had never been defended, and confounds judgement with sentence. Mr. Hargrave, strange to say, has made a much greater blunder, and imagined that the question related to their right of voting on a bill of attainder, which no one, I believe, ever disputed. Notes on Co. Litt. 134 b.

* Madox, Baronia Anglica, p. 138. Dialogus de Scaccario, l. i. c. 17. Lyttleton's Henry II. vol. ii. p. 217. The last of these writers supposes, contrary to Selden, that the earls continued to be governors of their counties under Henry II. Stephen created a few titular earls, with grants of crown lands to support them; but his successor resumed the grants, and deprived them of their earldoms.

In Rymer's Fœdera, vol. i. p. 3. we find a grant of Matilda, creating Milo of Glocester earl of Hereford, with the mote and castle of that city in fee to him and his heirs, the third penny of the rent of the city, and of the pleas in the county, three manors and a forest, and the service of three tenants in chief, with all their fiefs; to be held with all privileges and liberties as fully as ever any earl in England had possessed them.

age, I find none of this description in the first Norman reigns, for even that of Clare was connected with the local earldom of Hertford.

It is universally agreed, that the only baronies known for two centuries after the conquest were incident to the tenure of land held immediately from the crown. There are however material difficulties in the way of rightly understanding their nature, which ought not to be passed over, because the consideration of baronial tenures will best develope the formation of our parliamentary system. Two of our most eminent legal antiquaries, Selden and Madox, have entertained different opinions as to the characteristics and attributes of this tenure.

Question as to the nature of baronies.

According to the first, every tenant in chief by knight-service was an honorary or parliamentary baron, by reason of his tenure. All these were summoned to the king's councils, and were peers of his court. Their baronies, or honours, as they were frequently called, consisted of a number of knight's fees, that is, of estates, from each of which the feudal service of knight was due; not fixed to thirteen fees and a third, as has been erroneously conceived, but varying according to the extent of the barony, and the reservation of service at the time of its creation. Were they more or fewer, however, their owner was equally a baron, and summoned to serve the king in parliament with his advice and judgement, as appears by many records and passages in history.

Theory of Selden;

But about the latter end of John's reign, some only of the most eminent tenants in chief were

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summoned by particular writs; the rest by one general summons through the sheriffs of their several counties. This is declared in the Great Charter of that prince, wherein he promises that, whenever an aid or scutage shall be required, faciemus summoneri archiepiscopos, episcopos, abbates, comites et majores barones regni sigillatim per literas nostras. Et præterea faciemus summoneri in generali per vicecomites et ballivos nostros omnes alios qui in capite tenent de nobis. Thus the barons are distinguished from other tenants in chief, as if that name were only applicable to a particular number of the king's immediate vassals. But it is reasonable to think, that before this charter was made, it had been settled by the law of some other parliament, how these greater barons should be distinguished from the lesser tenants in chief; else what certainty could there be in an expression so general and indefinite? And this is likely to have proceeded from the pride with which the ancient and wealthy barons of the realm would regard those newly created by grants of escheated honours, or those decayed in estate, who yet were by their tenures on an equality with themselves. They procured therefore two innovations in their condition; first, that these inferior barons should be summoned generally by the sheriff, instead of receiving their particular writs, which made an honorary distinction; and next, that they should pay relief, not as for an entire barony, one hundred marks; but at the rate of five pounds for each knight's-fee which

they held of the crown. This changed their tenure to one by mere knight-service, and their denomination to tenants in chief. It was not difficult, afterwards, for the greater barons to exclude any from coming to parliament as such, without particular writs directed to them, for which purpose some law was probably enacted in the reign of Henry III. If indeed we could place reliance on a nameless author whom Camden has quoted, this limitation of the peerage to such as were expressly summoned depended upon a statute made soon after the battle of Evesham. But no one has ever been able to discover Camden's authority, and the change was, probably, of a much earlier date.*

of Madox;

Such is the theory of Selden, which, if it rested less upon conjectural alterations in the law, would undoubtedly solve some material difficulties that occur in the opposite view of the subject. According to Madox, tenure by knight's service in chief was always distinct from that by barony. It is not easy, however, to point out the characteristic differences of the two; nor has that eminent antiquary, in his large work, the Baronia Anglica, laid down any definition, or attempted to explain the real nature of a barony. The distinction could not consist in the number of knight's fees; for the barony of Hwayton consisted of only three; while John de Baliol held thirty fees by mere knight-

and observations upon both.

* Selden's Works, vol. iii. p. 713—743.

service.* Nor does it seem to have consisted in the privilege or service of attending parliament, since all tenants in chief were usually summoned. But whatever may have been the line between these modes of tenure, there seems complete proof of their separation long before the reign of John. Tenants in chief are enumerated distinctly from earls and barons in the charter of Henry I. Knights, as well as barons, are named as present in the parliament of Northampton in 1165, in that held at the same town in 1176, and upon other occasions.† Several persons appear in the Liber Niger Scaccarii, a roll of military tenants made in the age of Henry II., who held single knight's fees of the crown. It is however highly probable, that, in a lax sense of the word, these knights may sometimes have been termed barons. The author of the Dialogus de Scaccario speaks of those holding greater or lesser baronies, including, as appears by the context, all tenants in chief.‡ The former of these seem to be the majores barones of King John's charter. And the secundæ dignitatis barones, said by a contemporary historian to have been present in the parliament of Northampton, were in all probability no other than the knightly tenants of the crown.§ For the word baro, origi-

* Lyttleton's Henry II. vol. ii. p. 212.

† Hody on Convocations, p. 222. 234.

‡ Lib. ii. c. 9.

§ Hody and Lord Lyttleton maintain these "barons of the second rank" to have been the sub-vassals of the crown; tenants of the great barons, to whom the name was sometimes improperly applied. This was very consistent with their opinion, that the commons were a part of parliament at

nally meaning only a man, was of very large significance, and is not unfrequently applied to common freeholders, as in the phrase of court-baron. It was used too for the magistrates or chief men of cities; as it is still for the judges of the exchequer, and the representatives of the Cinque-Ports.

The passage however before cited from the Great Charter of John affords one spot of firm footing in the course of our progress. Then, at least, it is evident that all tenants in chief were entitled to their summons; the greater barons by particular writs, the rest, through one directed to their sheriff. The epoch when all, who, though tenants in chief, had not been actually summoned, were deprived of their right of attendance in parliament, is again involved in uncertainty and conjecture. The unknown writer quoted by Camden seems not sufficient authority to establish his assertion, that they were excluded by a statute made after the battle of Evesham. The principle was most likely acknowledged at an earlier time. Simon de Montfort summoned only twenty-three temporal peers to his famous parliament. In the year 1255, the barons complained, that many of their number had not received their writs, according to the tenour of the charter, and refused to grant an aid to the king till they were issued.*

that time. But Hume, assuming at once the truth of their interpretation in this instance, and the falsehood of their system, treats it as a deviation from the established rule, and a proof of the unsettled state of the constitution.

* M. Paris, p. 785. The barons even tell the king, that this was contrary to *his* charter, in which

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But it would have been easy to disappoint this mode of packing a parliament, if an unsummoned baron could have sat by mere right of his tenure. The opinion of Selden, that a law of exclusion was enacted towards the beginning of Henry's reign, is not liable to so much objection. But perhaps it is unnecessary to frame an hypothesis of this nature. Writs of summons might probably be older than the time of John;* and when this had become the customary and regular preliminary of a baron's coming to parliament, it was a natural transition to look upon it as an indispensable condition; in times when the prerogative was high, the law unsettled, and the service in parliament deemed by many still more burthensome than honourable. Some omissions in summoning the king's tenants to former parliaments may perhaps have produced the above-mentioned provision of the Great Charter, which had a relation to the imposition of taxes, wherein it was deemed essential to obtain a more universal consent, than was required in councils held for state, or even for advice.†

Whether mere tenants in chief attended parliament.

It is not easy to determine how long the inferior tenants in chief continued to sit personally in parliament. In the charters of Henry III., the

nevertheless the clause to that effect, contained in his father's charter, had been omitted.

* Henry II., in 1175, forbad any of those who had been concerned in the late rebellion to come to his court without a particular summons. Carte, vol. ii. p. 249.

† Upon the subject of tenure by barony, besides the writers already quoted, see West's Inquiry into the Method of creating Peers, and Carte's History of England, vol. ii. p. 247.

clause which we have been considering is omitted: and I think there is no express proof remaining, that the sheriff was ever directed to summon the king's military tenants within his county, in the manner which the charter of John required. It appears however that they were in fact members of parliament on many occasions during Henry's reign, which shews that they were summoned, either by particular writs, or through the sheriff; and the latter is the more plausible conjecture. There is indeed great obscurity as to the constitution of parliament in this reign; and the passages which I am about to produce may lead some to conceive that the freeholders were *represented* even from its beginning. I rather incline to a different opinion.

liament under Henry III.

In the Magna Charta of 1 Henry III., it is said: Pro hâc donatione et concessione ..... archiepiscopi, episcopi, comites, barones, milites, et liberè tenentes, et omnes de regno nostro dederunt nobis quintam decimam partem omnium bonorum suorum mobilium.* So in a record of 19 Henry III.: Comites, et barones, et omnes alii de toto regno nostro Angliæ, spontaneâ voluntate suâ concesserunt nobis efficax auxilium.† The largeness of these words is, however, controuled by a subsequent passage, which declares the tax to be imposed ad mandatum omnium comitum et baronum et omnium aliorum *qui de nobis tenent in capite*. And it seems to have been a general prac-

* Hody on Convocations, p. 293.

† Brady, Introduction to History of England. Appendix. p. 43.

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tice, to assume the common consent of all ranks, to that which had actually been agreed by the higher. In a similar writ, 21 Henry III., the ranks of men are enumerated specifically: archiepiscopi, episcopi, abbates, priores, et clerici terras habentes quæ ad ecclesias suas non pertinent, comites, barones, milites, et liberi homines, pro se et suis villanis, nobis concesserunt in auxilium tricesimam partem omnium mobilium.* In the close roll of the same year, we have a writ directed to the archbishops, bishops, abbots, priors, earls, barons, knights, and freeholders, (liberi homines) of Ireland; in which an aid is desired of them, and it is urged, that one had been granted by his fideles Angliæ.†

But this attendance in parliament of inferior tenants in chief, some of them too poor to have received knighthood, grew insupportably vexatious to themselves, and was not well liked by the king. He knew them to be dependent upon the barons, and dreaded the confluence of a multitude, who assumed the privilege of coming in arms to the appointed place. So inconvenient and mischievous a scheme could not long subsist among an advancing people, and fortunately the true remedy was discovered with little difficulty.

Origin and progress of parliamentary representation.

The principle of representation, in its widest sense, can hardly be unknown to any government not purely democratical. In almost every

* Brady's History of England, vol. i. Appendix, p. 182.

† Brady's Introduction, p. 94.

country the sense of the whole is understood to be spoken by a part, and the decisions of a part are binding upon the whole. Among our ancestors, the lord stood in the place of his vassals, and, still more unquestionably, the abbot in that of his monks. The system indeed of ecclesiastical councils, considered as organs of the church, rested upon the principle of a virtual or an express representation, and had a tendency to render its application to national assemblies more familiar.

The first instance of actual representation which occurs in our history is only four years after the conquest; when William, if we may rely on Hoveden, caused twelve persons skilled in the customs of England to be chosen from each county, who were sworn to inform him rightly of their laws; and these, so ascertained, were ratified by the consent of the great council. This, Sir Matthew Hale asserts to be "as sufficient and effectual a parliament as ever was held in England."* But there is no appearance that these twelve deputies of each county were invested with any higher authority than that of declaring their ancient usages. No stress can be laid, at least, on this insulated and anomalous assembly, the existence of which is only learned from an historian of a century later.

We find nothing that can arrest our attention, in searching out the origin of county representation, till we come to a writ in the fifteenth year of

*Hist. of Common Law, vol. i. p. 202.

John, directed to all the sheriffs in the following terms: Rex Vicecomiti N., salutem. Præcipimus tibi quod omnes milites ballivæ tuæ qui summoniti fuerunt esse apud Oxoniam ad Nos a die Omnium Sanctorum in quindecim dies venire facias cum armis suis: corpora vero baronum sine armis singulariter, et *quatuor discretos milites* de comitatu tuo, illuc venire facias ad eundem terminum, ad loquendum nobiscum de negotiis regni nostri. For the explanation of this obscure writ, I must refer to what Prynne has said;* but it remains problematical, whether these four knights (the only clause which concerns our purpose) were to be elected by the county, or returned, in the nature of a jury, at the discretion of the sheriff. Since there is no sufficient proof whereon to decide, we can only say with hesitation, that there *may* have been an instance of county representation in the fifteenth year of John.

We may next advert to a practice, of which there is very clear proof in the reign of Henry III. Subsidies granted in parliament were assessed, not as in former times, by the justices upon their circuits, but by knights freely chosen in the county-court. This appears by two writs, one of the fourth, and one of the ninth year of Henry III.† At a subsequent period, by a provision of the Oxford parliament in 1258, every county elected four knights to inquire into grievances, and deliver their inquisition into parliament.‡

* 2 Prynne's Register, p. 16.

† Brady's Introduction. Appendix, pp. 41. and 44.

‡ Brady's History of England, vol. i. Appendix, p. 227.

The next writ now extant, that wears the appearance of parliamentary representation, is in the thirty-eighth of Henry III. This, after reciting that the earls, barons, and other great men (cæteri magnates) were to meet at London three weeks after Easter, with horses and arms, for the purpose of sailing into Gascony, requires the sheriff to compel all within his jurisdiction, who hold twenty pounds a year of the king in chief, or of those in ward of the king, to appear at the same time and place. And that besides those mentioned he shall cause to come before the king's council at Westminster on the fifteenth day after Easter, two good and discreet knights of his county, whom the men of the county shall have chosen for this purpose, in the stead of all and each of them, to consider, along with the knights of other counties, what aid they will grant the king in such an emergency.* In the principle of election, and in the object of the assembly, which was to grant money, this certainly resembles a summons to parliament. There are indeed anomalies, sufficiently remarkable upon the face of the writ, which distinguish this meeting from a regular parliament. But when the scheme of obtaining money from the commons of shires through the consent of their representatives had once been entertained, it was easily applicable to more formal councils of the nation.

A few years later there appears another writ

* 2 Prynne, p. 23.

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analogous to a summons. During the contest between Henry III. and the confederate barons in 1261, they presumed to call a sort of parliament, summoning three knights out of every county, secum tractaturos super communibus negotiis regni. This we learn only by an opposite writ issued by the king, directing the sheriff to injoin these knights who had been convened by the earls of Leicester and Glocester to their meeting at St. Albans, that they should repair instead to the king at Windsor, and to no other place, nobiscum super præmissis colloquium habituros.* It is not absolutely certain, that these knights were elected by their respective counties. But even if they were so, this assembly has much less the appearance of a parliament than that in the thirty-eighth of Henry III.

At length, in the year 1265, the forty-ninth of Henry III. while he was a captive in the hands of Simon de Montfort, writs were issued in his name to all the sheriffs, directing them to return two knights for the body of their county, with two citizens or burgesses for every city and borough contained within it. This therefore is the epoch, at which the representation of the commons becomes indisputably manifest; even should we reject altogether the more equivocal instances of it which have just been enumerated.

Whether the knights were elected by freeholders in general.

If indeed the knights were still elected by none but the king's military tenants, if the mode of re-

* 2 Prynne, p. 27.

presentation was merely adopted to spare them the inconvenience of personal attendance, the immediate innovation in our polity was not very extensive. This is an interesting, but very obscure topic of inquiry. Spelman and Brady, with other writers, have restrained the original right of election to tenants in chief, among whom, in process of time, those holding under mesne lords, not being readily distinguishable in the hurry of an election, contrived to slide in, till at length their encroachments were rendered legitimate by the statute 7 H. IV. c. 15. which put all suitors to the county-court on an equal footing as to the elective franchise. The argument on this side might be plausibly urged with the following reasoning.

The spirit of a feudal monarchy, which compelled every lord to act by the advice and assent of his immediate vassals, established no relation between him and those who held nothing at his hands. They were included, so far as he was concerned, in their superiors; and the feudal incidents were due to him from the whole of his vassal's fief, whatever tenants might possess it by sub-infeudation. In England, the tenants in chief alone were called to the great councils before representation was thought of, as is evident both by the charter of John, and by the language of many records; nor were any others concerned in levying aids or escuages, which were only due by virtue of their tenure. These military tenants were become in the reign of Henry III. far more numerous than they had been under the Conqueror. If we

include those who held of the king ut de honore, that is, the tenants of baronies escheated or in ward, who may probably have enjoyed the same privileges, being subject, in general, to the same burthens, their number will be greatly augmented, and form no inconsiderable portion of the freeholders of the kingdom. After the statute commonly called Quia emptores in the eighteenth of Edward I. they were likely to increase much more, as every licensed alienation of any portion of a fief by a tenant in chief would create a new freehold immediately depending upon the crown. Many of these tenants in capite held very small fractions of knight's fees, and were consequently not called upon to receive knighthood. They were plain freeholders holding in chief, and the liberi homines or liberè tenentes of those writs which have been already quoted. The common form indeed of writs to the sheriff directs the knights to be chosen de communitate comitatûs. But the word communitas, as in boroughs, denotes only the superior part: it is not unusual to find mention in records of communitas populi or omnes de regno, where none are intended but the barons, or at most the tenants in chief. If we look attentively at the earliest instance of summoning knights of shires to parliament, that in 38 H. III., which has been noticed above, it will appear that they could have only been chosen by military tenants in chief. The object of calling this parliament, if parliament it were, was to obtain an aid from the military tenants, who, holding less

than a knight's fee, were not required to do personal service. None then, surely, but the tenants in chief could be electors upon this occasion, which merely respected their feudal duties. Again, to come much lower down, we find a series of petitions in the reigns of Edward III. and Richard II., which seem to lead us to a conclusion, that only tenants in chief were represented by the knights of shires. The writ for wages directed the sheriff to levy them on the commons of the county, both within franchises and without, (tam intra libertates quam extra). But the tenants of lords holding by barony endeavoured to exempt themselves from this burthen, in which they seem to have been countenanced by the king. This led to frequent remonstrances from the commons, who finally procured a statute, that all lands, not discharged by prescription, should contribute to the payment of wages.* But, if these mesne tenants had possessed equal rights of voting with tenants in chief, it is impossible to conceive that they would have thought of claiming so unreasonable an exemption. Yet, as it would appear harsh to make any distinction between the rights of those who sustained an equal burthen, we may perceive, how the freeholders holding of mesne lords might on that account obtain after the statute a participation in the privilege of tenants in chief. And without supposing any partiality or connivance, it is easy to comprehend, that while the nature of

* 12 Ric. II. c. 12. Prynne's 4th Register.

tenures and services was so obscure, as to give rise to continual disputes, of which the ancient records of the King's Bench are full, no sheriff could be very accurate in rejecting the votes of common freeholders, repairing to the county-court, and undistinguishable, as must be allowed, from tenants in capite upon other occasions, such as serving on juries, or voting on the election of coroners. To all this it yields some corroboration, that a neighbouring though long hostile kingdom, who borrowed much of her law from our own, has never admitted any freeholders, except tenants in chief of the crown, to a suffrage in county elections. These attended the parliament of Scotland in person till 1428, when a law of James I. permitted them to send representatives.*

Such is, I think, a fair statement of the arguments that might be alledged by those who would restrain the right of election to tenants of the crown. It may be urged on the other side, that the genius of the feudal system was never completely displayed in England; much less can we make use of that policy to explain institutions that prevailed under Edward I. Instead of aids and scutages levied upon the king's military tenants, the crown found ampler resources in subsidies upon moveables, from which no class of men was exempted. But the statute that abolished all unparliamentary taxation led, at least in theoreti-

* Pinkerton's Hist. of Scotland, vol. i. p. 120. 357. But this law was not regularly acted upon till 1587. p. 368.

cal principle, to extend the elective franchise to as large a mass of the people as could conveniently exercise it. It was even in the mouth of our kings, that what concerned all should be approved by all. Nor is the language of all extant writs less adverse to the supposition that the right of suffrage in county elections was limited to tenants in chief. It seems extraordinary, that such a restriction, if it existed, should never be deducible from these instruments; that their terms should invariably be large enough to comprise all freeholders. Yet no more is ever required of the sheriff than to return two knights, chosen by the body of the county. For they are not only said to be returned pro communitate, but "per communitatem," and "de assensu totius communitatis." Nor is it satisfactory to alledge, without any proof, that this word should be restricted to the tenants in chief, contrary to what must appear to be its obvious meaning.* Certainly, if these tenants of the crown had found inferior freeholders usurping a right of suffrage, we might expect to find it the subject of some

* What can one, who adopts this opinion of Dr. Brady, say to the following record? Rex militibus, liberis hominibus, et *toti communitati* comitatus Wygorniæ tam intra libertates quam extra, salutem. Cum comites, barones, milites, liberi homines, et communitates comitatuum regni nostri vicesimam omnium bonorum suorum mobilium, civesque et burgenses et communitates omnium civitatum et burgorum ejusdem regni, necnon tenentes de antiquis dominicis coronæ nostræ quindecimam bonorum suorum mobilium nobis concesserunt. Pat. Rot. 1 E. II. in Rot. Parl. vol. i. p. 442. See also p. 241. and p. 269. If the word communitas is here used in any precise sense, which, when possible, we are to suppose in construing a legal instrument, it must designate, not the tenants in chief, but the inferior class, who, though neither freeholders nor free burgesses, were yet contributable to the subsidy on their goods.

legislative provision, or at least of some petition and complaint. And, on the other hand, it would have been considered as unreasonable to levy the wages due to knights of the shire for their service in parliament on those who had no share in their election. But it appears by writs at the very beginning of Edward II.'s reign, that wages were levied "de communitate comitatus."* It will scarcely be contended, that no one was to contribute under this writ, but tenants in chief; and yet the word communitas can hardly be applied to different persons, when it occurs in the same instrument, and upon the same matter. The series of petitions above-mentioned relative to the payment of wages rather tends to support a conclusion that all mesne tenants had the right of suffrage, if they thought fit to exercise it, since it was earnestly contended that they were liable to contribute towards that expense. Nor does there appear any reason to doubt that all freeholders, except those within particular franchises, were suitors to the county-court; an institution of no feudal nature, and in which elections were to be made by those present. As to the meeting to which knights of shires were summoned in 38 H. III., it ought not to be reckoned a parliament, but rather one of those anomalous conventions which sometimes occurred in the unfixed state of government. It is at least the earliest known instance of representation, and leads us to no conclusion in respect of later times, when the commons had become an essential part of the legis-

* Madox, Firma Burgi, p. 99. and p. 102. note Z.

lature, and their consent was required to all public burthens.

This question, upon the whole, is certainly not free from considerable difficulty. The legal antiquaries are divided. Prynne does not seem to have doubted, but that the knights were "elected in the full county, by and for the whole county," without respect to the tenure of the freeholders.* But Brady and Carte are of a different opinion.† Yet their disposition to narrow the basis of the constitution is so strong, that it creates a sort of prejudice against their authority. And, if I might offer an opinion on so obscure a subject, I should be much inclined to believe, that even from the reign of Edward I., the election of knights, by all freeholders in the county-court, without regard to tenure, was little, if at all, different from what it is at present.‡

Progress of towns.

The progress of towns in several continental countries from a condition bordering upon servitude to wealth and liberty has more than once attracted our attention in other parts of the present work. Their growth in England, both from general causes and imitative policy, was very similar and nearly co-incident. Under the Anglo-Saxon line of sovereigns, we scarcely can discover in our scanty records the condition of their inhabitants; except retrospectively from the great survey of Domesday Book, which displays the state

* Prynne's 2d Register, p. 50.

† Carte's Hist. of England, vol. ii. p. 250.

‡ The present question has been discussed with much ability in the Edinburgh Review, vol. xxvi. p. 341.

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of England under Edward the Confessor. Some attention to commerce had been shewn by Alfred and Athelstan; and a merchant who had made three voyages beyond sea was raised by a law of the latter monarch to the dignity of a Thane.* This privilege was not perhaps often claimed; but the burgesses of towns were already a distinct class from the ceorls or rustics, and, though hardly free according to our estimation, seem to have laid the foundation of more extensive immunities. It is probable, at least, that the English towns had made full as great advances towards emancipation as those of France. At the conquest, we find the burgesses or inhabitants of towns living under the superiority or protection of the king, or of some other lord, to whom they paid annual rents, and determinate dues or customs. Sometimes they belonged to different lords; and sometimes the same burgess paid custom to one master, while he was under the jurisdiction of another. They frequently enjoyed special privileges as to inheritance; and in two or three instances they seem to have possessed common property, belonging to a sort of guild or corporation; but never, as far as appears by any evidence, had they a municipal administration by magistrates of their own choice.† Besides the regular payments, which were in general not heavy, they were liable to tallages at

* Wilkins, p. 71.

† Burgenses Exoniæ urbis habent extra civitatem terram duodecim carucatarum; quæ nullam consuetudinem reddunt nisi ad ipsam civitatem. Domesday, p. 100. At Canterbury the burgesses had forty-five houses without the city, de quibus ipsi habebant gablum et consuetudinem, rex autem socam et sacam: ipsi quoque burgenses habebant de rege triginta tres acras

the discretion of their lords. This burthen continued for two centuries, with no limitation, except that the barons were latterly forced to ask permission of the king before they set a tallage on their tenants, which was commonly done when he imposed one upon his own.* Still the towns became

prati in gildam suam. p. 2. In Lincoln and Stamford some resident proprietors, called Lagemanni, had jurisdiction (socam et sacam) over their tenants. But no where have I been able to discover any trace of internal self government; unless Chester may be deemed an exception, where we read of twelve judices civitatis; but by whom constituted, does not appear. The word lageman seems equivalent to judex. The guild mentioned above at Canterbury was, in all probability, a voluntary association; so at Dover we find the burgesses guildhall, gihalla burgensium. p. 1.

Many of the passages in Domesday relative to the state of burgesses are collected in Brady's History of Boroughs; a work, which, if read with due suspicion of the author's honesty, will convey a great deal of knowledge.

Since the former part of this note was written, I have met with a charter granted by Henry II. to Lincoln, which seems to refer, more explicitly than any similar instrument, to municipal privileges of jurisdiction enjoyed by the citizens under Edward the Confessor. These charters, it is well known, do not always recite what is true; yet it is possible, that the citizens of Lincoln, which had been one of the five Danish towns, sometimes mentioned with a sort of distinction by writers before the conquest, might be in a more advantageous situation than the generality of burgesses. Sciatis me concessisse civibus meis Lincoln, omnes libertates et consuetudines et leges suas, quas habuerunt tempore Edwardi et Wilh. et Henr. regum Angliæ, et gildam suam mercatoriam de hominibus civitatis et de aliis mercatoribus, comitatus, sicut illam habuerunt tempore predictorum antecessorum nostrorum, regum Angliæ, melius et liberius. Et omnes homines qui infra quatuor divisas civitatis manent et mercatum deducunt, sint ad gildas, et consuetudines et assisas civitatis, sicut melius fuerunt temp. Edw. et Will. et Henr. regum Angliæ. Rymer, t. i. p. 40. (Edit. 1816.)

I am indebted to the friendly remarks of the periodical critic whom I have before mentioned, for reminding me of other charters of the same age, expressed in a similar manner, which in my haste I had overlooked, though printed in common books. But whether these general words ought to outweigh the silence of Domesday Book, I am not prepared to decide. I have admitted below, that the possession of corporate property implies an elective government for its administration, and I think it perfectly clear that the guilds made bye-laws for the regulation of their members. Yet this is something different from municipal jurisdiction over all the inhabitants of a town.

* Madox, Hist. of Exchequer, c. 17.

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considerably richer: for the profits of their traffic were undiminished by competition; and the consciousness that they could not be individually despoiled of their possessions, like the villeins of the country around, inspired an industry and perseverance, which all the rapacity of Norman kings and barons was unable to daunt or overcome.

Towns let in fee-farm.

One of the earliest and most important changes in the condition of the burgesses was the conversion of their individual tributes into a perpetual rent from the whole borough. The town was then said to be affermed, or let in fee-farm to the burgesses and their successors for ever.* Previously to such a grant, the lord held the town in his demesne, and was the legal proprietor of the soil and tenements;† though I by no means apprehend that the burgesses were destitute of a certain estate in their possessions. But of a town in fee-farm he only kept the superiority, and the inheritance of the annual rent, which he might recover by distress.† The burgesses held their lands by burgage-tenure, nearly analogous to, or rather a species of free socage.‡ Perhaps before the grant they might correspond to modern copyholders. It is of some importance to observe, that the lord by such a grant of the town in fee-farm, whatever we may think of its previous condition, divested himself of his property, or lucrative do-

* Madox, Firma Burgi, p. 1. There is one instance, I know not if any more could be found, of a firma burgi before the conquest. It was at Huntingdon. Domesday, p. 203.

† Madox, p. 12, 13.

‡ Id. p. 21.

minion over the soil, in return for the perpetual rent; so that tallages subsequently set at his own discretion upon the inhabitants, however common, can hardly be considered as a just exercise of the rights of proprietorship.

Charters of incorporation.

Under such a system of arbitrary taxation, however, it was evident to the most selfish tyrant, that the wealth of his burgesses was his wealth, and their prosperity his interest; much more were liberal and sagacious monarchs, like Henry II., inclined to encourage them by privileges. From the time of William Rufus, there was no reign in which charters were not granted to different towns, of exemption from tolls on rivers and at markets, those lighter manacles of feudal tyranny; or of commercial franchises; or of immunity from the ordinary jurisdictions; or, lastly, of internal self-regulation. Thus the original charter of Henry I. to the city of London* concedes to the citizens, in addition to valuable commercial and fiscal immunities, the right of chusing their own sheriff and justice, to the exclusion of every foreign jurisdiction.† These grants, however;

* I have read somewhere that this charter was granted in 1101. But the instrument itself, which is only preserved by an Inspeximus of Edward IV., does not contain any date. Rymer, t. i. p. 11. (Edit. 1816.) Could it be traced so high, the circumstance would be remarkable, as the earliest charters granted by Louis VI. supposed to be the father of these institutions, are several years later.

† This did not, however, save the citizens from fining in one hundred marks to the king for this privilege. Mag. Rot. 5 Steph. apud Madox, Hist. Exchequer, t. xi. I do not know that the charter of Henry I. can be suspected; but Brady, in his treatise of Boroughs, (p. 38. edit. 1777.) does not think proper once to mention it; and indeed uses many expressions incompatible with its existence.

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were not in general so extensive till the reign of John.* Before that time, the interior arrangement of towns had received a new organization. In the Saxon period, we find voluntary associations, sometimes religious, sometimes secular; in some cases for mutual defence against injury, in others for mutual relief in poverty. These were called guilds, from the Saxon verb *gildan*, to pay or contribute, and exhibited the natural, if not the legal character of corporations.† At the time

* Blomefield, Hist. of Norfolk, vol. ii. p. 16. says that Henry I. granted the same privileges by charter to Norwich in 1122, which London possessed. Yet it appears, that the king named the port-reeve or provost; but Blomefield suggests, that he was probably recommended by the citizens, the office being annual.

† Madox, Firma Burgi, p. 23. Hickes has given us a bond of fellowship among the thanes of Cambridgeshire, containing several curious particulars. A composition of eight pounds, exclusive, I conceive, of the usual weregild, was to be enforced from the slayer of any fellow. If a fellow (gildá) killed a man of 1200 shillings weregild, each of the society was to contribute half a marc; for a ceorl, two ora (perhaps ten shillings); for a Welshman, one. If however this act was committed wantonly, the fellow had no right to call on the society for contribution. If one fellow killed another he was to pay the legal weregild to his kindred, and also eight pounds to the society. Harsh words used by one fellow towards another, or even towards a stranger, incurred a fine. No one was to eat or drink in the company of one who had killed his brother fellow, unless in the presence of the king, bishop or alderman. Dissertatio Epistolaris, p. 21.

We find in Wilkins's Anglo-Saxon laws, p. 65. a number of ordinances, sworn to by persons both of noble and ignoble rank, (ge eorlisce ge ceorlisce) and confirmed by King Athelstan. These are in the nature of bye-laws for the regulation of certain societies that had been formed for the preservation of public order. Their remedy was rather violent: to kill and seize the effects of all who should rob any member of the association. This property, after deducting the value of the thing stolen, was to be divided into two parts; one given to the criminal's wife if not an accomplice, the other shared between the king and the society.

In another fraternity among the clergy and laity of Exeter, every fellow was entitled to a contribution in case of taking a journey, or if his house was burned. Thus they resembled, in some degree, our friendly societies; and display an interesting picture of manners, which has induced me to insert this note, though not greatly to the

of the conquest, as has been mentioned above, such voluntary incorporations of the burgesses possessed in some towns either landed property of their own, or rights of superiority over that of others. An internal elective government seems to have been required for the administration of a common revenue, and of other business incident to their association.* They became more numerous, and more peculiarly commercial after that æra, as well from the increase of trade, as through imitation of similar fraternities existing in many towns of France. The spirit of monopoly gave strength to those institutions, each class of traders forming itself into a body, in order to exclude competition. Thus were established the companies in corporate towns, that of the Weavers in London being perhaps the earliest;† and these were successively consolidated and sanctioned by charters from the crown. In towns not large enough to admit of distinct companies, one merchant guild comprehended the traders in general, or the chief of them; and this, from the reign of Henry II. downwards, became the subject of incorporating charters. The management of their internal concerns, previously to any incorporation,

present purpose. See more of the Anglo-Saxon guilds in Turner's History, vol. ii. p. 102. Societies of the same kind, for purposes of religion, charity, or mutual assistance, rather than trade, may be found long afterwards. Blomefield's Hist. of Norfolk, vol. iii. p. 494.

* See a grant from Turstin, archbishop of York, in the reign of Henry I., to the burgesses of Beverley, that they may have their *hanshus* (i. e. guildhall) like those of York, et ibi sua statuta pertractant ad honorem Dei, &c. Rymer, t. i. p. 10. edit. 1816.

† Madox, Firma Burgi, p. 189.

fell naturally enough into a sort of oligarchy, which the tenor of the charter generally preserved. Though the immunities might be very extensive, the powers were more or less restrained to a small number. Except in a few places, the right of chusing magistrates was first given by King John; and certainly must rather be ascribed to his poverty, than to any enlarged policy, of which he was utterly incapable.*

Prosperity of English towns.

From the middle of the twelfth century to that of the thirteenth, the traders of England became more and more prosperous. The towns on the southern coast exported tin and other metals in exchange for the wines of France; those on the eastern sent corn to Norway; the cinque-ports bartered wool against the stuffs of Flanders.† Though bearing no comparison with the cities of Italy or the Empire, they increased sufficiently to acquire importance at home. That vigorous prerogative of the Norman monarchs, which kept down the feudal aristocracy, compensated for whatever inferiority there might be in the population and defensible strength of the English towns, compared with those on the continent. They had to fear no petty oppressors, no local hostility; and if they could satisfy the rapacity of the crown, were secure from all other grievances. London, far above the rest, our ancient and noble capital, might, even in those early times, be justly termed

London.

* Idem, passim. A few of an earlier date may be found in the new edition of Rymer.

† Lyttleton's Hist. of Henry II. vol. ii. p. 170. Macpherson's Annals of Commerce, vol. i. p. 331.

a member of the political system. This great city, so admirably situated, was rich and populous long before the conquest. Bede, at the beginning of the eighth century, speaks of London as a great market, which traders frequented by land and sea.* It paid £15,000 out of £82,000, raised by Canute upon the kingdom.† If we believe Roger Hoveden, the citizens of London, on the death of Ethelred II., joined with part of the nobility in raising Edmund Ironside to the throne.‡ Harold I., according to better authority, the Saxon Chronicle, and William of Malmsbury, was elected by their concurrence.§ Descending to later history, we find them active in the civil war of Stephen and Matilda. The famous bishop of Winchester tells the Londoners, that they are almost accounted as noblemen on account of the greatness of their city; into the community of which it appears that some barons had been received.‖ Indeed the citizens themselves, or at least the principal of them, were called barons. It was certainly by far the greatest city in England. There have been different esti-

* Macpherson, p. 245.

† Id., p. 282.

‡ Cives Lundinenses, et pars nobilium, qui eo tempore consistebant Lundoniæ, Clitonem Eadmundum unanimi consensu in regem levavere. p. 249.

§ Chron. Saxon. p. 154. Malmsbury, p. 76. He says the people of London were become almost barbarians through their intercourse with the Danes; propter frequentem convictum.

‖ Londinenses, qui sunt quasi optimates pro magnitudine civitatis in Anglia. Malmsb. p. 189. Thus too Matthew Paris: cives Londinenses, quos propter civitatis dignitatem et civium antiquam libertatem Barones consuevimus appellare. p. 744.; and in another place: totius civitatis cives, quos barones votant. p. 835. Spelman says, that the magistrates of several other towns were called barons. Glossary, Barones de London.

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mates of its population, some of which are extravagant; but I think it could hardly have contained less than thirty or forty thousand souls within its walls; and the suburbs were very populous.* These numbers, the enjoyment of privileges, and the consciousness of strength, infused a free and even mutinous spirit into their conduct.† The Londoners were always on the barons side in their contests with the crown. They bore a part in deposing William Longchamp, the chancellor and justiciary of Richard I.‡ They were distinguished

* Drake, the historian of York, maintains that London was less populous, about the time of the conquest, than that city; and quotes Hardynge, a writer of Henry V.'s age, to prove that the interior part of the former was not closely built. Eboracum, p. 91. York however does not appear to have contained more than 10,000 inhabitants at the accession of the Conqueror; and the very exaggerations as to the populousness of London prove that it must have far exceeded that number. Fitz-Stephen, the contemporary biographer of Thomas Becket, tells us of 80,000 men capable of bearing arms within its precincts; where however his translator, Pegge, suspects a mistake of the M. S. in the numerals. And this, with similar hyperboles, so imposed on the judicious mind of Lord Lyttleton, that finding in Peter of Blois the inhabitants of London reckoned at quadraginta millia, he has actually proposed to read quadringenta. Hist. Henry II. vol. iv. ad finem. It is hardly necessary to observe, that the condition of agriculture and internal communication would not have allowed half that number to subsist.

The subsidy-roll of 1377, published in the Archæologia, vol. vii. would lead to a conclusion that all the inhabitants of London did not even then exceed 35,000. If this be true, they could not have amounted, probably, to so great a number two or three centuries earlier.

† This seditious, or at least refractory character of the Londoners was displayed in the tumult headed by William Longbeard in the time of Richard I., and that under Constantine in 1222, the patriarchs of a long line of city demagogues. Hoveden, p. 765. M. Paris, p. 154.

‡ Hoveden's expressions are very precise, and shew that the share taken by the citizens of London (probably the mayor and aldermen) in this measure was no tumultuary acclamation, but a deliberate concurrence with the nobility. Comes Johannes, et fere omnes episcopi, et comites Angliæ eâdem die intraverunt Londonias; et in crastino prædictus Johannes frater regis, et archiepiscopus Ro-

in the great struggle for Magna Charta; the privileges of their city are expressly confirmed in it; and the Mayor of London was one of the twenty-five barons to whom the maintenance of its provisions was delegated. In the subsequent reign, the citizens of London were regarded with much dislike and jealousy by the court, and sometimes suffered pretty severely by its hands; especially after the battle of Evesham.*

Notwithstanding the influence of London in these seasons of disturbance, we do not perceive that it was distinguished from the most insignificant town by greater participation in national councils. Rich, powerful, honourable, and high-spirited as its citizens had become, it was very long before they found a regular place in parliament. The prerogative of imposing tallages at pleasure, unsparingly exercised by Henry III. even over London,† left the crown no inducement to

thomagensis, et omnes episcopi, et comites, et barones, et cives Londonienses cum illis convenerunt in atrio ecclesiæ S. Pauli..... Placuit ergo Johanni fratri regis, et omnibus episcopis, et comitibus, et baronibus regni, et civibus Londoniarum, quod cancellarius ille deponeretur, et deposuerunt eum, &c. p. 701.

* The reader may consult, for a more full account of the English towns before the middle of the thirteenth century, Lyttleton's History of Henry II., vol. ii. p. 174.; and Macpherson's Annals of Commerce.

† Frequent proofs of this may be found in Madox, Hist. of Exchequer, c. 17. as well as in Matt. Paris, who laments it with indignation. Cives Londinenses, contra consuetudinem et libertatem civitatis, quasi servi ultimæ conditionis, non sub nomine aut titulo liberi adjutorii, sed tallagii, quod multum eos angebat, regi, licet inviti et renitentes, numerare sunt coacti. p. 492. Heu ubi est Londinensis, toties empta, toties concessa, toties scripta, toties jurata libertas! &c. p. 657. The king sometimes suspended their market, that is, I suppose, their right of toll, till his demands were paid.

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summon the inhabitants of cities and boroughs. As these indeed were daily growing more considerable, they were certain, in a monarchy so limited as that of England became in the thirteenth century, of attaining, sooner or later, this eminent privilege. Although therefore the object of Simon de Montfort in calling them to his parliament after the battle of Lewes was merely to strengthen his own faction, which prevailed among the commonalty, yet their permanent admission into the legislature may be ascribed to a more general cause. For otherwise it is not easy to see, why the innovation of an usurper should have been drawn into precedent, though it might perhaps accelerate what the course of affairs was gradually preparing.

First summoning of towns to parliament, in 49 H. III.

It is well known, that the earliest writs of summons to cities and boroughs, of which we can prove the existence, are those of Simon de Montfort, earl of Leicester, bearing date 12th of December, 1264, in the forty-ninth year of Henry III.* After a long controversy, almost all judicious inquirers seem to have acquiesced in admitting this origin of popular representation.† The argu-

* These writs are not extant, having perhaps never been returned; and consequently we cannot tell to what particular places they were addressed. It appears however that the assembly was intended to be numerous; for the entry runs; scribitur civibus Ebor, civibus Lincoln, et cæteris burgis Angliæ. It is singular, that no mention is made of London, which must have had some special summons. Rymer, t. i. p. 803. Dugdale, Summonitiones ad Parliamentum, p. 1.

† It would ill repay any reader's diligence to wade through the vapid and diluted pages of Tyrrell; but whoever would know what can be best be pleaded for a higher antiquity of our present parliamentary constitution, may have recourse to

ment may be very concisely stated. We find from innumerable records that the king imposed tallages upon his demesne towns at discretion.* No public instrument previous to the forty-ninth of Henry III. names the citizens and burgesses as constituent parts of parliament; though prelates, barons, knights, and sometimes free-holders are enumerated;† while since the undoubted admission of the commons, they are almost invariably mentioned.‡ No historian speaks of representatives appearing for the people, or uses the word citizen or burgess in describing those present in parliament. Such convincing, though negative evidence is not to be invalidated by some general and ambiguous phrases, whether in writs and records, or in historians.‡ Those monkish annalists are poor authorities upon any point where their language is to be delicately measured. But it is hardly possible, that writing circumstantially, as Roger

Hody on Convocations, and Lord Lyttleton's History of Henry II. vol. ii. p. 276., and vol. iv. p. 79—106. I do not conceive it possible to argue the question more ingeniously than has been done by the noble writer last quoted. Whitelocke, in his commentary on the parliamentary writ, has treated it very much at length, but with no critical discrimination.

* Madox, Hist. of Exchequer, c. 17.

† The only apparent exception to this is in the letter addressed to the pope by the parliament of 1246; the salutation of which runs thus: Barones, proceres, et magnates, *ac nobiles portuum maris habitatores*, necnon et clerus et populus universus, salutem. Matt. Paris, p. 696. It is plain, I think, from these words, that some of the chief inhabitants of the Cinque-ports, at that time very flourishing towns, were present in this parliament. But whether they sat as representatives, or by a peculiar writ of summons, is not so evident; and the latter may be the more probable hypothesis of the two.

‡ Thus Matthew Paris tells us that, in 1237, the whole kingdom, regni totius universitas, repaired to a parliament of Henry III. p. 367.

de Hoveden and Matthew Paris sometimes did, concerning proceedings in parliament, they could have failed to mention the commons in unequivocal expressions, if any representatives from that order had actually formed a part of the assembly.

Authorities in favour of an earlier date.

Two authorities, however, which have been supposed to prove a greater antiquity than we have assigned to the representation of the commons, are deserving of particular consideration; the cases of St. Albans and Barnstaple. The burgesses of St. Albans complained to the council in the eighth year of Edward II., that, although they held of the king in capite, and ought to attend his parliaments whenever they are summoned, by two of their number, instead of all other services, as had been their custom in all past times, which service the said burgesses and their predecessors had performed as well in the time of the late king Edward and his ancestors, as in that of the present king until the parliament now sitting, the names of their deputies having been constantly enrolled in chancery, yet the sheriff of Hertfordshire, at the instigation of the abbot of St. Albans, had neglected to cause an election and return to be made; and prayed remedy. To this petition it was answered, "Let the rolls of chancery be examined, that it may appear, whether the said burgesses were accustomed to come to parliament, or not, in the times of the king's ancestors; and let right be done to them, vocatis evocandis, si necesse fuerit." I do not translate these words, concerning the sense of which there has been some dispute, though

St. Albans.

not, apparently, very material to the principal subject.*

This is, in my opinion, by far the most plausible testimony for the early representation of boroughs. The burgesses of St. Albans claim a prescriptive right from the usage of all past times, and more especially, those of the late Edward and his ancestors. Could this be alledged, it has been said, of a privilege at the utmost of fifty years standing, once granted by an usurper, in the days of the late king's father, and afterwards discontinued till about twenty years before the date of their petition, according to those, who refer the regular appearance of the commons in parliament to the twenty-third of Edward I.? Brady, who obviously felt the strength of this authority, has shewn little of his usual ardour and acuteness in repelling it. It was observed, however, by Madox, that the petition of St. Albans contains two very singular allegations: it asserts that the town was part of the king's demesne, whereas it had invariably belonged to the adjoining abbey; and that its burgesses held by the tenure of attending parliament, instead of all other services, contrary to all analogy, and without a parallel in the condition of any tenant in capite throughout the kingdom. "It is no wonder, therefore," says Hume, "that a petition which advances two falsehoods, should contain one historical mistake, which indeed amounts only to an inaccurate expression." But

* Brady's Introduction to Hist. of England, p. 38.

it must be confessed, that we cannot so easily dispense with the whole authority of this record. For whatever assurance the people of St. Albans might shew in asserting what was untrue, the king's council must have been aware how recently the deputies of any towns had been admitted into parliament. If the lawful birth of the House of Commons were in 1295, as is maintained by Brady and his disciples, is it conceivable that, in 1315, the council would have received a petition, claiming the elective franchise by prescription, and have referred to the rolls of chancery to inquire whether this had been used in the days of the king's progenitors? I confess that I see no answer which can easily be given to this objection by such as adopt the *latest* epoch of borough representation, namely, the parliament of 23 E. I. But they are by no means equally conclusive against the supposition, that the communities of cities and towns, having been first introduced into the legislature during Leicester's usurpation; in the forty-ninth year of Henry III., were summoned, not perhaps uniformly, but without any long intermission, to succeeding parliaments. There is a strong presumption, from the language of a contemporary historian, that they sat in the parliament of 1269, four years after that convened by Leicester.* It is

* Convocatis universis Angliæ prelatis et magnatibus, necnon cunctarum regni sui civitatum et burgorum potentioribus. Wikes, in Gale, xv Scriptores, t. ii. p. 88. I am indebted to Hody on Convocations for this reference, which seems to have escaped most of our constitutional writers.

more unequivocally stated by another annalist, that they were present in the first parliament of Edward I. held in 1271.* Nor does a similar inference want some degree of support from the preambles of the statute of Marlebridge in 51 H. III., of Westminster I., in the third, and of Glocester, in the sixth year of Edward I.† And the writs are extant, which summon every city, borough, and market town to send two deputies to a council in the eleventh year of his reign. I call this a council, for it undoubtedly was not a parliament. The sheriffs were directed to summon personally all who held more than twenty pounds a year of the crown, as well as four knights for each county, invested with full powers to act for the commons thereof. The knights and burgesses thus chosen, as well as the clergy within the province of Canterbury, met at Northampton; those within the province of York, at that city. And neither

* Hoc anno .... convenerunt archiepiscopi, episcopi, comites et barones, abbates et priores, et de quolibet comitatu quatuor milites, et de quâlibet civitâte quatuor. Annales Waverleienses, in Gale, t. ii. p. 227. I was led to this passage by Atterbury, Rights of Convocations, p. 310. where some other authorities, less unquestionable, are adduced for the same purpose. Both this assembly, and that mentioned by Wikes in 1269, were certainly parliaments, and acted as such, particularly the former, though summoned for purposes not strictly parliamentary.

† The statute of Marlebridge is said to be made convocatis discretioribus, tam majoribus quàm minoribus; that of Westminster primer, par son conseil, et par l'essentements des archievesques, evesques, abbes, priors, countes, barons, et tout le comminalty de la terre illonques summones. The statute of Glocester runs, appelles les plus discretes de son royaume, auxibien des grandes come des meinders. These preambles seem to have satisfied Mr. Prynne that the commons were then represented, though the writs are wanting; and certainly no one could be less disposed to exaggerate their antiquity. 2d Register, p. 30.

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assembly was opened by the king.* This anomalous convention was nevertheless one means of establishing the representative system, and, to an inquirer free from technical prejudice, is little less important than a regular parliament. Nor have we long to look even for this. In the same year, about eight months after the councils at Northampton and York, writs were issued summoning to a parliament at Shrewsbury two citizens from London, and as many from each of twenty other considerable towns.† It is a slight cavil to object, that these were not directed as usual to the sheriff of each county, but to the magistrates of each place. Though a very imperfect, this was a regular and unequivocal representation of the commons in parliament. But their attendance seems to have intermitted from this time to the twenty-third year of Edward's reign.

Barnstaple.

Those to whom the petition of St. Albans is not satisfactory will hardly yield their conviction to that of Barnstaple. This town set forth in the eighteenth of Edward III., that among other franchises granted to them by a charter of Athelstan they had ever since exercised the right of

* Brady's Hist. of England, vol. ii. Appendix. Carte, vol. ii. p. 257.

† This is commonly denominated the parliament of Acton Burnell; the clergy and commons having sat in that town, while the barons passed judgement upon David, prince of Wales, at Shrewsbury. The towns which were honoured with the privilege of representation, and may consequently be supposed to have been at that time the most considerable in England, were York, Carlisle, Scarborough, Nottingham, Grimsby, Lincoln, Northampton, Lynn, Yarmouth, Colchester, Norwich, Chester, Shrewsbury, Worcester, Hereford, Bristol, Canterbury, Winchester and Exeter. Rymer, t. ii. p. 247.

sending two burgesses to parliament. The said charter indeed was unfortunately mislaid; and the prayer of their petition was to obtain one of the like import in its stead. Barnstaple, it must be observed, was a town belonging to Lord Audley, and had actually returned members ever since the twenty-third of Edward I. Upon an inquisition directed by the king to be made into the truth of these allegations, it was found that "the burgesses of the said town were wont to send two burgesses to parliament for the commonalty of the borough;" but nothing appeared as to the pretended charter of Athelstan, or the liberties which it was alledged to contain. The burgesses, dissatisfied with this inquest, prevailed that another should be taken, which certainly answered better their wishes. The second jury found that Barnstaple was a free borough, from time immemorial; that the burgesses had enjoyed under a charter of Athelstan, which had been casually lost, certain franchises by them enumerated, and particularly that they should send two burgesses to parliament; and that it would not be to the king's prejudice, if he should grant them a fresh charter in terms equally ample with that of his predecessor Athelstan. But the following year we have another writ and another inquest, the former reciting that the second return had been unduly and fraudulently made; and the latter expressly contradicting the previous inquest in many points, and especially finding no proof of Athelstan's supposed charter. Comparing the various parts of this business, we shall proba-

bly be induced to agree with Willis, that it was but an attempt of the inhabitants of Barnstaple to withdraw themselves from the jurisdiction of their lord. For the right of returning burgesses, though it is the main point of our inquiries, was by no means the most prominent part of their petition, which rather went to establish some civil privileges of devising their tenements, and electing their own mayor. The first and fairest return finds only that they were accustomed to send members to parliament, which an usage of fifty years (from 23 E. I. to 18 E. III.) was fully sufficient to establish, without searching into more remote antiquity.*

It has however probably occurred to the reader of these two cases, St. Albans and Barnstaple, that the representation of the commons in parliament was not treated as a novelty, even in times little posterior to those in which we have been supposing it to have originated. In this consists, I think, the sole strength of the opposite argument. An act in the fifth year of Richard II. declares, that if any sheriff shall leave out of his returns any cities or boroughs which be bound, and of old time were wont to come to the parliament, he shall be punished as was accustomed to be done in the like case in time past.† In the memorable assertion of legislative right by the commons in the second of Henry V., (which will be quoted

* Willis, Notitia Parliamentaria, vol. ii. p. 312. Lyttleton's Hist. of Hen. II. vol. iv. p. 89.

† 5 Ric. II. stat. 2. c. iv.

hereafter,) they affirm that "the commune of the land is, *and ever has been*, a member of parliament."* And the consenting suffrage of our older law-books must be placed in the same scale. The first gainsayers, I think, were Camden and Sir Henry Spelman, who upon probing the antiquities of our constitution somewhat more exactly than their predecessors, declared that they could find no signs of the commons in parliament till the forty-ninth of Henry III. Prynne, some years afterwards, with much vigour and learning, maintained the same argument, and Brady completed the victory. But the current doctrine of Westminster Hall, and still more of the two chambers of parliament, was certainly much against these antiquaries; and it passed at one time for a surrender of popular principles, and almost a breach of privilege, to dispute the lineal descent of the House of Commons from the wittenagemot.†

* Rot. Parl. vol. iv. p. 22.

† Though such an argument would not be conclusive, it might afford some ground for hesitation, if the royal burghs of Scotland were actually represented in their parliament more than half a century before the date assigned to the first representation of English towns. Lord Hailes concludes from a passage in Fordun, "that, as early as 1211, burgesses gave suit and presence in the great council of the king's vassals; though the contrary has been asserted with much confidence by various authors." Annals of Scotland, vol. i. p. 139. Fordun's words, however, so far from importing that they formed a member of the legislature, which perhaps Lord Hailes did not mean by the quaint expression "gave suit and presence," do not appear to me conclusive to prove that they were actually present. Hoc anno Rex Scotiæ Willelmus magnum tenuit consilium. Ubi, petito ab optimatibus auxilio, promiserunt se daturos decem mille marcas: præter burgenses regni, qui sex millia promiserunt. Those who know the brief and incorrect style of chronicles will not think it unlikely that the offer of 6000 marks by the burgesses was not made in parliament, but in consequence of separate requisitions from the

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The true ground of these pretensions to antiquity was a very well founded persuasion, that no other argument would be so conclusive to ordinary minds, or cut short so effectually all encroachments of the prerogative. The populace of every country, but none so much as the English, easily grasp the notion of right, meaning thereby something positive and definite; while the maxims of expediency or theoretical reasoning pass slightly over their minds. Happy indeed for England, that it is so! But we have here to do with the fact alone. And it may be observed, that several pious frauds were practised, to exalt the antiquity of our constitutional liberties. These began, perhaps, very early, when the imaginary laws of Edward the Confessor were so earnestly demanded. They were carried farther under Edward I. and his successors, when the fable of privileges granted by the Conqueror to the men of Kent was devised; when Andrew Horn filled his Mirrour of Justices with fictitious tales of Alfred; and above all, when the "Method of holding parliaments in the time of Ethelred" was fabricated, about the end of Richard II.'s reign; an imposture which was not too gross to deceive Sir Edward Coke.

Causes of summoning deputies from boroughs.

There is no great difficulty in answering the question, why the deputies of boroughs were

crown. Pinkerton is of opinion, that the magistrates of royal burghs might upon this, and perhaps other occasions, have attended at the bar of parliament with their offers of money. But the deputies of towns do not appear as a part of parliament till 1326. Hist. of Scotland, vol. i. p. 352. 371.

finally and permanently ingrafted upon parliament by Edward I.* The government was becoming constantly more attentive to the wealth that commerce brought into the kingdom, and the towns were becoming more flourishing and more independent. But, chiefly, there was a much stronger spirit of general liberty, and a greater discontent at violent acts of prerogative, from the æra of Magna Charta; after which authentic recognition of free principles, many acts which had seemed before but the regular exercise of authority were looked upon as infringements of the subject's right. Among these the custom of setting tallages at discretion would naturally appear the most intolerable; and men were unwilling to remember that the burgesses who paid them were indebted for the rest of their possessions to the bounty of the crown. In Edward I.'s reign, even before the great act of Confirmation of the Charters had rendered arbitrary impositions absolutely unconstitutional, they might perhaps excite louder murmurs than a discreet administration would risk. Though the necessities of the king, therefore, and

* These expressions cannot appear too strong. But it is very remarkable, that to the parliament of 18 Edward III., the writs appear to have summoned none of the towns, but only the counties. Willis, Notit. Parliament. vol. i. Preface, p. 13. Prynne's Register, 3d part, p. 144. Yet the citizens and burgesses are once, but only once, named as present in the parliamentary roll; and there is, in general, a chasm in place of their names, where the different ranks present are enumerated. Rot. Parl. vol. ii. p. 146. A subsidy was granted at this parliament; so that, if the citizens and burgesses were really not summoned, it is by far the most violent stretch of power during the reign of Edward III. But I know of no collateral evidence to illustrate or disprove it.

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his imperious temper often led him to this course,* it was a more prudent counsel to try the willingness of his people, before he forced their reluctance. And the success of this innovation rendered it worth repetition. Whether it were from the complacency of the commons at being thus admitted among the peers of the realm, or from a persuasion that the king would take their money, if they refused it, or from inability to withstand the plausible reasons of his ministers, or from the private influence to which the leaders of every popular assembly have been accessible, much more was granted in subsidies, after the representation of the towns commenced, than had ever been extorted in tallages.

To grant money was, therefore, the main object of their meeting, and if the exigencies of the administration could have been relieved without subsidies, the citizens and burgesses might still have sat at home, and obeyed the laws which a council of prelates and barons enacted for their government. But it is a difficult question, whether the king and the peers designed to make room for them, as it were, in legislation; and whether the power of the purse drew after it immediately, or only by degrees, those indispensable rights of consenting to laws which they now possess. There are no sufficient means of solving

* Tallages were imposed without consent of parliament in 17 E. I. Wykes, p. 117.; and in 32 E. I. Brady's Hist. of Eng. vol. ii. In the latter instance the king also gave leave to the lay and spiritual nobility to set a tallage on their own tenants. This was subsequent to the Confirmatio Chartarum, and unquestionably illegal.

this doubt during the reign of Edward I. The writ in 22 E. I. directs two knights to be chosen cum plenâ potestate prò se et totâ communitate comitatûs prædicti, ad consulendum et consentiendum pro se et communitate illâ, his quæ comites, barones, et proceres prædicti concorditer ordinaverint in præmissis. That of the next year runs, ad faciendum tunc quod de communi consilio ordinabitur in præmissis. The same words are inserted in the writ of 26 E. I. In that of 28 E. I. the knights are directed to be sent cum plenâ potestate audiendi et faciendi quæ ibidem ordinari contigerint pro communi commodo. Several others of the same reign have the words ad faciendum. The difficulty is to pronounce, whether this term is to be interpreted in the sense of *performing*, or of *enacting;* whether the representatives of the commons were merely to learn from the lords, what was to be done, or to bear their part in advising upon it. The earliest writ, that of 22 E. I., certainly implies the latter; and I do not know that any of the rest are conclusive to the contrary. In the reign of Edward II., the words ad consentiendum alone, or ad faciendum et consentiendum, begin; and from that of Edward III., this form has been constantly used.* It must still however be highly questionable, whether the commons, who had so recently taken their place

* Prynne's 2d Register. It may be remarked, that writs of summons to great councils never ran ad faciendum, but ad tractandum, consulendum et consentiendum; from which some would infer that faciendum had the sense of enacting; since statutes could not be passed in such assemblies. Id. p. 92.

in parliament, gave any thing more than a constructive assent to the laws enacted during this reign. They are not even named in the preamble of any statute till the last year of Edward I. Upon more than one occasion, the sheriffs were directed to return the same members who had sat in the last parliament, unless prevented by death or infirmity.*

At what time parliament was divided into two houses.

It has been a very prevailing opinion, that parliament was not divided into two houses at the first admission of the commons. If by this is only meant that the commons did not occupy a separate chamber till some time in the reign of Edward III., the proposition, true or false, will be of little importance. They may have sat at the bottom of Westminster Hall, while the lords occupied the upper end. But that they were ever intermingled in voting appears inconsistent with likelihood and authority. The usual object of calling a parliament was to impose taxes; and these for many years after the introduction of the commons were laid in different proportions upon the three estates of the realm. Thus in the 23 E. I., the earls, barons and knights gave the king an eleventh, the clergy a tenth; while he obtained a seventh from the citizens and burgesses; in the twenty-fourth of the same king, the two former of these orders gave a twelfth, the last an eighth; in the thirty-third year, a thirtieth was

* 28 E. I. in Prynne's 4th Register, p. 12.; 9 E. II. (a great council) p. 48.

the grant of the barons and knights, and of the clergy, a twentieth of the cities and towns; in the first of Edward II., the counties paid a twentieth, the towns a fifteenth; in the sixth of Edward III., the rates were a fifteenth and a tenth.* These distinct grants imply distinct grantors; for it is not to be imagined that the commons intermeddled in those affecting the lords, or the lords in those of the commons. Nor can we rationally suppose, that the commons, who, if we include the knights among them, were at least double the number of the lay and spiritual peers, could have been permitted to jostle this haughty aristocracy out of their ancient privileges, by voting or even deliberating promiscuously upon measures of legislation. In fact, however, there is abundant proof of their separate existence long before the seventeenth of Edward III., which is the epoch assigned by Carte,† or even the sixth of that king, which has been chosen by some other writers. Thus the commons sat at Acton Burnell in the eleventh of Edward I., while the upper house was at Shrewsbury. In the eighth of Edward II., "the commons of England complain to the king and his council, &c."‡ These must surely have been the commons assembled in parliament, for who else could thus have entitled themselves? In the nineteenth of

* Brady's Hist. of England, vol. ii. p. 40. Parliamentary History, vol. i. p. 206. Rot. Parliament. t. ii. p. 66.

† Carte, vol. ii. p. 451. Parliamentary History, vol. i. p. 234.

‡ Rot. Parl. v. i. p. 289.

the same king, we find several petitions, evidently proceeding from the body of the commons in parliament, and complaining of public grievances.* The roll of 1 E. III., though mutilated, is conclusive to shew that separate petitions were then presented by the commons, according to the regular usage of subsequent times.† And indeed the preamble of 1 E. III. stat. 2. is apparently capable of no other inference.

As the knights of shires corresponded to the lower nobility of other feudal countries, we have less cause to be surprized, that they belonged originally to the same branch of parliament as the barons, than at their subsequent intermixture with men so inferior in station as the citizens and burgesses. It is by no means easy to define the point of time when this distribution was settled; but I think it may be inferred from the rolls of parliament, that the houses were divided as they are at present, in the eighth, ninth, and nineteenth years of Edward II.‡ This appears however beyond doubt in the first of Edward III.§ Yet in the sixth of the same prince, though the knights and burgesses are expressly mentioned to have consulted together, the former taxed themselves in a smaller rate of subsidy than the latter.‖

The proper business of the House of Commons was to petition for redress of grievances, as much as to provide for the necessities of the crown. In

* Rot. Parl. vol. i. p. 430.
† Id. vol. ii. p. 7.
‡ Id. p. 289. 351. 430.
§ Id. vol. ii. p. 5.
‖ Id. p. 86.

the prudent fiction of English law, no wrong is supposed to proceed from the source of right. The throne is fixed upon a pinnacle, which perpetual beams of truth and justice irradiate, though corruption and partiality may occupy the middle region, and cast their chill shade upon all below. In his high court of parliament, a king of England was to learn where injustice had been unpunished, and where right had been delayed. The common courts of law, if they were sufficiently honest, were not sufficiently strong to redress the subject's injuries, where the officers of the crown, or the nobles interfered. To parliament he looked as the great remedial court for relief of private as well as public grievances. For this cause it was ordained in the fifth of Edward II., that the king should hold a parliament, once or, if necessary, twice every year; "that the pleas which have been thus delayed, and those where the justices have differed, may be brought to a close."* And a short act of 4 Edward III., which was not very strictly regarded, provides that a parliament shall be held "every year, or oftener, if need be."† By what persons, and under what limitations, this jurisdiction in parliament was exercised, will come under our future consideration.

* Rot. Parl. vol. i. p. 285.

† 4 E. III. c. 14. Annual sessions of parliament seem fully to satisfy the words, and still more the spirit of this act, and of 36 E. III. c. 10.; which however are repealed by implication from the provisions of 6 W. III. c. 2. But it was very rare under the Plantagenet dynasty for a parliament to continue more than a year.

Edward II. Petitions of parliament during his reign.

The efficacy of a king's personal character, in so imperfect a state of government, was never more strongly exemplified than in the two first Edwards. The father, a little before his death, had humbled his boldest opponents among the nobility; and as for the commons, so far from claiming a right of remonstrating, we have seen cause to doubt whether they were accounted effectual members of the legislature, for any purposes but taxation. But in the very second year of the son's reign, they granted the twenty-fifth penny of their goods, "upon this condition, that the king should take advice and grant redress upon certain articles, wherein they are aggrieved." These were answered at the ensuing parliament, and are entered, with the king's respective promises of redress, upon the roll. It will be worth while to extract part of this record, that we may see what were the complaints of the commons of England, and their notions of right in 1309. I have chosen, on this as on other occasions, to translate very literally, at the expense of some stiffness, and perhaps obscurity in language.

"The good people of the kingdom who are come hither to parliament, pray our lord the king that he will, if it please him, have regard to his poor subjects, who are much aggrieved by reason that they are not governed as they should be; especially as to the articles of the Great Charter; and for this, if it please him, they pray remedy. Besides which they pray their lord the king to

hear what has long aggrieved his people, and still does so from day to day, on the part of those who call themselves his officers, and to amend it, if he pleases." The articles, eleven in number, are to the following purport: 1. That the king's purveyors seize great quantities of victuals without payment; 2. That new customs are set on wine, cloth, and other imports; 3. That the current coin is not so good as formerly;* 4, 5. That the steward and marshal enlarge their jurisdiction beyond measure to the oppression of the people; 6. That the commons find none to receive petitions addressed to the council; 7. That the collectors of the king's dues (pernours des prises) in towns and at fairs, take more than is lawful; 8. That men are delayed in their civil suits by writs of protection; 9. That felons escape punishment by procuring charters of pardon; 10. That the constables of the king's castles take cognizance of common pleas; 11. That the king's escheators oust men of lands held by good title, under pretence of an inquest of office.†

These articles display in a short compass the nature of those grievances, which existed under almost all the princes of the Plantagenet dynasty, and are spread over the rolls of parliament for more than a century after this time. Edward

* This article is so expressed, as to make it appear that the grievance was the high price of commodities. But as this was the natural effect of a degraded currency, and the whole tenor of these articles relates to abuses of government, I think it must have meant what I have said in the text.

† Prynne's 2d Register, p. 68. Rot. Parl. vol. i. p. 282.

gave the amplest assurances of putting an end to them all; except in one instance, the augmented customs on imports, to which he answered rather evasively, that he would take them off, till he should perceive whether himself and his people derived advantage from so doing, and act thereupon as he should be advised. Accordingly, the next year, he issued writs to collect these new customs again. But the Lords Ordainers superseded the writs, having entirely abrogated all illegal impositions.* It does not appear, however, that, regard had to the times, there was any thing very tyrannical in Edward's government. He set tallages sometimes, like his father, on his demesne towns without assent of parliament.† In the nineteenth year of his reign, the commons shew, that "whereas we and our ancestors have given many tallages to the king's ancestors to obtain the charter of the forest, which charter we have had confirmed by the present king, paying him largely on our part; yet the king's officers of the forest seize on lands, and destroy ditches, and oppress the people, for which they pray remedy, for the sake of God and his father's soul." They complain at the same time of arbitrary imprisonment, against the law of the land.‡ To both these petitions the king returned a promise of redress; and they complete the catalogue of cus-

* Prynne's 2d Register, p. 75.
† Madox, Firma Burgi, p. 6. Rot. Parl. vol. i. p. 449.
‡ Rot. Parl. vol. i. p. 430.

tomary grievances in this period of our constitution.

During the reign of Edward II. the rolls of parliament are imperfect, and we have not much assistance from other sources. The assent of the commons, which frequently is not specified in the statutes of this age, appears in two remarkable and revolutionary proceedings, the appointment of the Lords Ordainers in 1312,* and that of Prince Edward as guardian of the realm in the rebellion which ended in the king's dethronement. In the former case, it indicates that the aristocratic party then combined against the crown were desirous of conciliating popularity. An historian relates, that some of the commons were consulted upon the ordinances to be made for the reformation of government.† In the latter case, the deposition of Edward II., I am satisfied, that the commons assent was pretended in order to give more speciousness to the transaction.‡ But as this proceed-

* Rot. Parl. vol. i. p. 281.

† Walsingham, p. 97.

‡ A record, which may be read in Brady's History of England, vol. ii. Append. p. 66., and in Rymer, t. iv. p. 1237., relative to the proceedings on Edward II.'s flight into Wales, and subsequent detention, recites that "the king, having left his kingdom without government, and gone away with notorious enemies of the queen, prince and realm; divers prelates, earls, barons and knights then being at Bristol, in the presence of the said queen and duke, (Prince Edward, duke of Cornwall,) *by the assent of the whole commonalty of the realm there being*, unanimously elected the said duke to be guardian of the said kingdom; so that the said duke and guardian should rule and govern the said realm, in the name and by the authority of the king his father, he being thus absent." But the king being taken, and brought back into England, the power thus delegated to the guardian ceased of course; whereupon the bishop of Hereford was sent to press the king to permit that the great seal, which he had with him, the prince having only used his private seal, should

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ing, however violent, bears evident marks of having been conducted by persons conversant in law, the mention of the commons may be deemed a testimony to their constitutional right of participation with the peers in making provision for a temporary defect of whatever nature in the executive government.

Edward III. The commons establish several rights.

During the long and prosperous reign of Edward III. the efforts of parliament in behalf of their country were rewarded with success, in establishing upon a firm footing three essential principles of our government; the illegality of raising money without consent; the necessity that the two houses should concur for any alterations in the law; and, lastly, the right of the commons to inquire into public abuses, and to impeach public counsellors. By exhibiting proofs of each of these from parliamentary records, I shall be able to substantiate the progressive improvement of our free constitution, which was principally consolidated during the reigns of Edward III. and his two next successors. Brady indeed, Carte, and the authors of the Parliamentary History, have trod already over this ground; but none of the three can be considered as familiar to the generality of

be used in all things that required it. Accordingly the king sent the great seal to the queen and prince. The bishop is said to have been thus commissioned to fetch the seal by the prince and queen, and by the said prelates and peers, *with the assent of the said commonalty then being at Hereford.* It is plain that these were mere words of course, for no parliament had been convoked, and no proper representatives could have been either at Bristol or Hereford. However, this is a very curious record, inasmuch as it proves the importance attached to the forms of the constitution at this period.

readers, and I may at least take credit for a sincerer love of liberty than any of their writings display.

In the sixth year of Edward III. a parliament was called to provide for the emergency of an Irish rebellion; wherein, "because the king could not send troops and money to Ireland without the aid of his people, the prelates, earls, barons, and other great men, and the knights of shires, and all the commons, of their free will, for the said purpose; and also in order that the king might live of his own, and not vex his people by excessive prises nor in other manner, grant to him the fifteenth penny, to levy of the commons,* and the tenth from the cities, towns and royal demesnes. And the king, at the request of the same, in ease of his people, grants that the commissions lately made to certain persons assigned to set tallages on cities, towns and demesnes throughout England shall be immediately repealed; and that in time to come he will not set such tallage, except as it has been done in the time of his ancestors, and as he may reasonably do."†

Remonstrances against levying money without consent.

These concluding words are of dangerous implication, and certainly it was not the intention of Edward, inferior to none of his predecessors in the love of power, to divest himself of that eminent prerogative, which, however illegally since the Confirmatio Chartarum, had been exercised by

* 'La commonaltée' seems in this place to mean the tenants of land, or commons of the counties, in contradistinction to citizens and burgesses.

† Rot. Parl. v. ii. p. 66.

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them all. But the parliament took no notice of this reservation, and continued with unshaken perseverance to insist on this incontestable and fundamental right, which he was prone enough to violate.

In the thirteenth year of this reign, the lords gave their answer to commissioners sent to open the parliament and to treat with them on the king's part, in a sealed roll. This contained a grant of the tenth sheaf, fleece and lamb. But, before they gave it, they took care to have letters patent shewed them, by which the commissioners had power "to grant some graces to the great and small of the kingdom." "And the said lords," the roll proceeds to say, "will, that the imposition (maletoste) which now again has been levied upon wool be entirely abolished, that the old customary duty be kept, and that they may have it by charter, and by enrollment in parliament, that such custom be never more levied, and that this grant now made to the king, or any other made in time past, shall not turn hereafter to their charge nor be drawn into precedent." The commons, who gave their answers in a separate roll, declared that they could grant no subsidy without consulting their constituents; and therefore begged that another parliament might be summoned, and in the mean time they would endeavour, by using persuasion with the people of their respective counties, to procure the grant of a reasonable aid in the next parliament.* They demanded also, that the impo-

* Rot. Parl. v. ii. p. 104.

sition on wool and lead should be taken as it used to be in former times, "inasmuch as it is enhanced without assent of the commons, or of the lords, as we understand; and, if it be otherwise demanded, that any one of the commons may refuse it (le puisse arester), without being troubled on that account, (saunz estre chalangé.)"*

Wool, however, the staple export of that age, was too easy and tempting a prey to be relinquished by a prince engaged in an impoverishing war. Seven years afterwards, in 20 E. III., we find the commons praying, that the great subsidy of forty shillings upon the sack of wool be taken off; and the old custom paid as heretofore was assented to and granted. The government spoke this time in a more authoritative tone. "As to this point, (the answer runs,) the prelates and others seeing in what need the king stood of an aid before his passage beyond sea, to recover his rights, and defend his kingdom of England, consented, with the concurrence of the merchants, that he should have in aid of his said war, and in defence of his said kingdom, forty shillings of subsidy for each sack of wool that should be exported beyond sea, for two years to come. And upon this grant divers merchants have made many advances to our lord the king, in aid of his war; for which cause this subsidy cannot be repealed without assent of the king and his lords."†

It is probable, that Edward's counsellors wished

* Rot. Parl. v. ii. p. 104. † Id. p. 161.

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to establish a distinction, long afterwards revived by those of James I., between customs levied on merchandize at the ports, and internal taxes. The statute entitled Confirmatio Chartarum had manifestly taken away the prerogative of imposing the latter, which indeed had never extended beyond the tenants of the royal demesne. But its language was not quite so explicit as to the former, although no reasonable doubt could be entertained that the intention of the legislature was to abrogate every species of imposition unauthorized by parliament. The thirtieth section of Magna Charta had provided, that foreign merchants should be free from all tributes, except the ancient customs; and it was strange to suppose, that denizens were excluded from the benefit of that enactment. Yet, owing to the ambiguous and elliptical style so frequent in our older laws, this was open to dispute, and could perhaps only be explained by usage. Edward I., in despite of both these statutes, had set a duty of three-pence in the pound upon goods imported by merchant strangers. This imposition was noticed as a grievance in the third year of his successor, and repealed by the Lords Ordainers. It was revived however by Edward III., and continued to be levied ever afterwards.*

* Case of impositions in Howell's State Trials, vol. ii. p. 371—519.; particularly the argument of Mr. Hakewill. Hale's Treatise on the Customs, in Hargrave's Tracts, vol. i.

Edward III. imposed another duty on cloth exported, on the pretence that as the wool must have paid a tax, he had a right to place the wrought and unwrought article on an equality. The commons remonstrated against this; but it was not repealed. This took place about 22 E. III. Hale's Treatise, p. 175.

Edward was led by the necessities of his unjust and expensive war into another arbitrary encroachment, of which we find as many complaints as of his pecuniary extortions. The commons pray, in the same parliament of 20 E. III., that commissions should not issue for the future out of chancery, to charge the people with providing men at arms, hobelers (or light cavalry), archers, victuals, or in any other manner, without consent of parliament. It is replied to this petition, that "it is notorious how in many parliaments the lords and commons had promised to aid the king in his quarrel with their bodies and goods as far as was in their power; wherefore the said lords seeing the necessity in which the king stood of having aid of men at-arms, hobelers and archers, before his passage to recover his rights beyond sea, and to defend his realm of England, ordained, that such as had five pounds a year or more in land on this side of Trent should furnish men at arms, hobelers and archers, according to the proportion of the land they held to attend the king at his cost; and some who would neither go themselves, nor find others in their stead, were willing to give the king wherewithal he might provide himself with some in their place. And thus the thing has been done, and no otherwise. And the king wills, that henceforth what has been thus done in this necessity be not drawn into consequence or example."*

The commons were not abashed by these arbi-

* Rot. Parl. p. 160.

trary pretensions; they knew that by incessant remonstrances they should gain at least one essential point, that of preventing the crown from claiming these usurpations as uncontested prerogatives. The roll of parliament in the next two years, the 21st and 22d of Edward III., is full of the same complaints on one side, and the same allegations of necessity on the other.* In the latter year, the commons grant a subsidy, on condition that no illegal levying of money should take place, with several other remedial provisions; "and that these conditions should be entered on the roll of parliament, as a matter of record, by which they may have remedy, if any thing should be attempted to the contrary in time to come." From this year the complaints of extortion become rather less frequent; and soon afterwards a statute was passed, "That no man shall be constained to find men at arms, hobelers, nor archers, other than those which hold by such services, if it be not by common assent and grant made in parliament."† Yet even in the last year of Edward's reign, when the boundaries of prerogative and the rights of parliament were better ascertained, the king lays a sort of claim to impose charges upon his subjects in cases of great necessity, and for the defence of his kingdom.‡ But this more humble language indicates a change in the spirit of government, which after long fretting impatiently at the curb,

* Rot. Parl. p. 161. 166. 201.
† 25 E. III. stat. v. c. 8.
‡ Rot. Parl. vol. ii. p. 366.

began at length to acknowledge the controuling hand of law.

These are the chief instances of a struggle between the crown and commons as to arbitrary taxation; but there are two remarkable proceedings in the 45th and 46th of Edward, which, though they would not have been endured in later times, are rather anomalies arising out of the unsettled state of the constitution and the recency of parliamentary rights, than mere encroachments of the prerogative. In the former year, parliament had granted a subsidy of fifty thousand pounds, to be collected by an assessment of twenty-two shillings and three-pence upon every parish, on a presumption that the parishes in England amounted to forty-five thousand, whereas they were hardly a fifth of that number. This amazing mistake was not discovered till the parliament had been dissolved. Upon its detection, the king summoned a great council, consisting of one knight, citizen and burgess, named by himself, out of two that had been returned to the last parliament.* To this assembly the chancellor set forth the deficiency of the last subsidy, and proved by the certificates of all the bishops in England, how strangely the parliament had mis-calculated the number of parishes; whereupon they increased the parochial assessment, by their own authority, to one hundred and sixteen shillings.† It is obvious, that the main intention of parliament was

* Prynne's 4th Register, p. 289. † Rot. Parl. p. 304.

carried into effect by this irregularity, which seems to have been the subject of no complaint. In the next parliament, a still more objectionable measure was resorted to; after the petitions of the commons had been answered, and the knights dismissed, the citizens and burgesses were convened before the prince of Wales and the lords in a room near the white chamber, and solicited to renew their subsidy of forty shillings upon the ton of wine and sixpence in the pound upon other imports, for safe convoy of shipping, during one year more; to which they assented; "and so departed."*

The concurrence of both houses in legislation necessary.

The second constitutional principle established in the reign of Edward III. was that the king and two houses of parliament in conjunction possessed exclusively the right of legislation. Laws were now declared to be made by the king at the request of the commons, and by the assent of the lords and prelates. Such at least was the general form, though for many subsequent ages there was no invariable regularity in this respect. The commons, who till this reign were rarely mentioned, were now as rarely omitted in the enacting clause.

* Rot. Parl. p. 310. In the mode of levying subsidies, a remarkable improvement took place early in the reign of Edward III. Originally, two chief taxors were appointed by the king for each county, who named twelve persons in every hundred to assess the moveable estate of all inhabitants according to its real value. But in 8 E. III., on complaint of parliament, that these taxors were partial, commissioners were sent round to compound with every town and parish for a gross sum, which was from thenceforth the fixed quota of subsidy and raised by the inhabitants themselves. Brady on Boroughs, p. 81.

It fact, it is evident from the rolls of parliament, that statutes were almost always founded upon their petition.* These petitions, with the respective answers made to them in the king's name, were drawn up after the end of the session in the form of laws, and entered upon the statute-roll. But here it must be remarked, that the petitions were often extremely qualified and altered by the answer, insomuch that many statutes of this and some later reigns by no means express the true sense of the commons. Sometimes they contented themselves with shewing their grievance, and praying remedy from the king and his council. Of this one eminent instance is the great statute of treasons. In the petition, whereon this act is founded, it is merely prayed that, "whereas the king's justices in different counties adjudge persons indicted before them to be traitors for sundry matters not known by the commons to be treason, it would please the king, by his council and by the great and wise men of the land, to declare what are treasons in this present parliament." The answer to this petition contains the existing statute, as a declaration on the king's part.† But there is no appearance that it received the direct assent of the lower house. In the next reigns,

* Laws appear to have been drawn up, and proposed to the two houses by the king, down to the time of Edward I. Hale's Hist. of Common Law, p. 16.

Sometimes the representatives of particular places address separate petitions to the king and council; as the citizens of London, the commons of Devonshire, &c. These are intermingled with the general petitions, and both together are for the most part very numerous. In the roll of 50 Edw. III. they amount to 140.

† Rot. Parl. p. 239.

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we shall find more remarkable instances of assuming a consent which was never positively given.

The statute of treasons, however, was supposed to be declaratory of the ancient law; in permanent and material innovations, a more direct concurrence of all the estates was probably required. A new statute, to be perpetually incorporated with the law of England, was regarded as no light matter. It was a very common answer to a petition of the commons, in the earlier part of this reign, that it could not be granted without making a new law. After the parliament of 14 E. III., a certain number of prelates, barons and counsellors, with twelve knights and six burgesses, were appointed to sit from day to day in order to turn such petitions and answers, as were fit to be perpetual, into a statute; but for such as were of a temporary nature, the king issued his letters patent.* This reluctance to innovate without necessity, and to swell the number of laws which all were bound to know and obey with an accumulation of transitory enactments, led, apparently, to the distinction between statutes and ordinances. The latter are indeed defined by some lawyers to be regulations proceeding from the king and lords, without concurrence of the commons. But if this be applicable to some ordinances, it is certain that the word, even when opposed to statute, with which it is often synonymous, sometimes denotes

Statutes distinguished from ordinances.

* p. 113.

an act of the whole legislature. In the 37th of Edward III., when divers sumptuary regulations against excess of apparel were made in full parliament, "it was demanded of the lords and commons, inasmuch as the matter of their petitions was novel, and unheard of before, whether they would have them granted by way of ordinance or of statute? They answered that it would be best to have them by way of ordinance, and not of statute, in order that any thing which should need amendment might be amended at the next parliament."* So much scruple did they entertain about tampering with the statute law of the land.

Ordinances, which, if it were not for their partial or temporary operation, could not well be distinguished from laws,† were often established in great councils. These assemblies, which frequently occurred in Edward's reign, were hardly distinguishable, except in name, from parliaments, being constituted not only of those who were regularly summoned to the house of lords, but of deputies from counties, cities and boroughs. Several places that never returned burgesses to parliament have sent deputies to some of these councils.‡ The most remarkable of these was that

* p. 280.

† "If there be any difference between an ordinance and a statute, as some have collected, it is but only this, that an ordinance is but temporary till confirmed and made perpetual; but a statute is perpetual at first, and so have some ordinances also been." Whitelocke on parliamentary Writ, vol. ii. p. 297. See Rot. Parl. vol. iii. p. 17.; vol. iv. p. 35.

‡ These may be found in Willis's Notitia Parliamentaria. In 28 E. I. the universities were sum-

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held in the 27th of Edward III., consisting of one knight for each county, and of deputies from all the cities and boroughs, wherein the ordinances of the staple were established. These were previously agreed upon by the king and lords, and copies given, one to the knights, another to the burgesses. The roll tells us, that they gave their opinion in writing to the council, after much deliberation, and that this was read and discussed by the great men. These ordinances fix the staple of wool in particular places within England, prohibit English merchants from exporting that article under pain of death, inflict sundry other penalties, create jurisdictions, and in short have the effect of a new and important law. After they were passed, the deputies of the commons granted a subsidy for three years, complained of grievances, and received answers, as if in a regular parliament. But they were aware that these proceedings partook of some irregularity, and endeavoured, as was their constant method, to keep up the legal forms of the constitution. In the last petition of this council, the commons pray, "because many articles touching the state of the king, and common profit of his kingdom have been agreed by him, the prelates, lords, and commons of his land, at this council, that the said articles may be recited at the next parliament, and entered upon the roll; for this cause, that ordinances and agreements made in council are not

moned to send members to a great council, in order to defend the king's right to the kingdom of Scotland. 1 Prynne.

of record, as if they had been made in a general parliament." This accordingly was done at the ensuing parliament, when these ordinances were expressly confirmed, and directed to be "holden for a statute to endure always."*

It must be confessed, that the distinction between ordinances and statutes is very obscure, and perhaps no precise and uniform principle can be laid down about it. But it sufficiently appears that whatever provisions altered the common law, or any former statute, and were entered upon the statute-roll, transmitted to the sheriffs, and promulgated to the people as general obligatory enactments, were holden to require the positive assent of both houses of parliament, duly and formally summoned.

Before we leave this subject, it will be proper to take notice of a remarkable stretch of prerogative, which, if drawn into precedent, would have effectually subverted this principle of parliamentary consent in legislation. In the 15th of Edward III., petitions were presented of a bolder and more innovating cast than was acceptable to the court; that no peer should be put to answer for any trespass, except before his peers; that commissioners should be assigned to examine the accounts of such as had received public monies; that the judges and ministers should be sworn to observe the Great Charter and other laws; and that they should be appointed in parliament. The

* Rot. Parl. p. 253. 257.

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last of these was probably the most obnoxious; but the king, unwilling to defer a supply which was granted merely upon condition that these petitions should prevail, suffered them to pass into a statute with an alteration which did not take off much from their efficacy; namely, that these officers should indeed be appointed by the king with the advice of his council, but should surrender their charges at the next parliament, and be there responsible to any who should have cause of complaint against them. The chancellor, treasurer and judges entered their protestation, that they had not assented to the said statutes, nor could they observe them, in case they should prove contrary to the laws and customs of the kingdom, which they were sworn to maintain.* This is the first instance of a protest on the roll of parliament against the passing of an act. Nevertheless they were compelled to swear on the cross of Canterbury to its observance.†

This excellent statute was attempted too early for complete success. Edward's ministers plainly saw that it left them at the mercy of future parliaments, who would readily learn the wholesome and constitutional principle of sparing the sovereign, while they punished his advisers. They had recourse therefore to a violent measure, but which was likely in those times to be endured. By a proclamation addressed to all the sheriffs, the king revokes and annuls the statute, as contrary to the

* p. 131. † p. 126.

laws and customs of England, and to his own just rights and prerogatives, which he had sworn to preserve; declaring that he had never consented to its passing, but having previously protested that he would revoke it, lest the parliament should have been separated in wrath, had dissembled, as was his duty, and permitted the great seal to be affixed; and that it appeared to the earls, barons and other learned persons of his kingdom, with whom he had consulted, that as the said statute had not proceeded from his own good will, it was null and could not have the name or force of law.* This revocation of a statute, as the price of which a subsidy had been granted, was a gross infringement of law, and undoubtedly passed for such at that time; for the right was already clear, though the remedy was not always attainable. Two years afterwards, Edward met his parliament, when that obnoxious statute was formally repealed.

Advice of parliament required on matters of war and peace.

Notwithstanding the king's unwillingness to permit this controul of parliament over his administration, he suffered, or rather solicited their interference in matters which have since been reckoned the exclusive province of the crown. This was an unfair trick of his policy. He was desirous, in order to prevent any murmuring about subsidies, to throw the war upon parliament as their own act, though none could have been com-

* Rymer, t. v. p. 282. This instrument betrays in its language Edward's consciousness of the violent step he was taking, and his wish to excuse it as much as possible.

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menced more selfishly for his own benefit, or less for the advantage of the people of England. It is called "the war which our lord the king has undertaken against his adversary of France by common consent of all the lords and commons of his realm in divers parliaments."* And he several times referred it to them to advise upon the subject of peace. But the commons shewed their humility or discretion by treating this as an invitation which it would shew good manners to decline, though in the 18th of the king's reign they had joined with the lords in imploring the king to make an end of the war by a battle, or by a suitable peace.† "Most dreaded lord," they say upon one occasion, "as to your war and the equipment necessary for it, we are so ignorant and simple that we know not how, nor have the power to advise; wherefore we pray your grace to excuse us in this matter, and that it please you, with advice of the great and wise persons of your council, to ordain what seems best to you for the honour and profit of yourself and your kingdom; and whatever shall be thus ordained by assent and agreement for you and your lords, we readily assent to, and will hold it firmly established."‡ At another time, after their petitions had been answered, "it was shewed to the lords and commons by Bartholomew de Burghersh, the king's chamberlain, how a treaty had been set on foot between the king and his adver-

* Rymer, t. v. p. 165.
† p. 148.
‡ 21 E. III. p. 165.

sary of France; and how he had good hope of a final and agreeable issue with God's help; to which he would not come without assent of the lords and commons. Wherefore the said chamberlain inquired on the king's part of the said lords and commons, whether they would assent and agree to the peace, in case it might be had by treaty between the parties. To which the said commons with one voice replied, that whatever end it should please the king and lords to make of the treaty would be agreeable to them. On which answer the chamberlain said to the commons, then you will assent to a perpetual treaty of peace if it can be had. And the said commons answered at once and unanimously, yes, yes."* The lords were not so diffident. Their great station as hereditary counsellors gave them weight in all deliberations of government; and they seem to have pretended to a negative voice in questions of peace. At least they answer, upon the proposals made by David king of Scots in 1368, which were submitted to them in parliament, that, "saving to the said David and his heirs the articles contained therein, they saw no way of making a treaty which would not openly turn to the disherison of the king and his heirs, to which they would on no account assent; and so departed for that day."† A few years before, they had made a similar answer

* 28 E. III. p. 261.

† p. 295. Carte says, "the lords and commons giving this advice separately, declared, &c." Hist. of England, vol. ii. p. 518. I can find no mention of the commons doing this in the roll of parliament.

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to some other propositions from Scotland.* It is not improbable, that in both these cases, they acted with the concurrence and at the instigation of the king; but the precedents might have been remembered in other circumstances.

Right of the commons to inquire into public abuses.

A third important acquisition of the house of commons during this reign was the establishment of their right to investigate and chastise the abuses of administration. In the fourteenth of Edward III., a committee of the lords' house had been appointed to examine the accounts of persons responsible for the receipt of the last subsidy; but it does not appear that the commons were concerned in this.† The unfortunate statute of the next year contained a similar provision, which was annulled with the rest. Many years elapsed before the commons tried the force of their vindictive arm. We must pass onward an entire generation of man, and look at the parliament assembled in the fiftieth of Edward III. Nothing memorable as to the interference of the commons in government occurs before, unless it be their request, in the forty-fifth of the king, that no clergyman should be made chancellor, treasurer, or other great officer; to which the king answered, that he would do what best pleased his council.‡

Parliament of 50 E. III.

It will be remembered by every one who has read our history, that in the latter years of Edward's life, his fame was tarnished by the ascen-

* Rymer, p. 269.
† p. 114.
‡ p. 304.

dancy of the duke of Lancaster and Alice Perrers. The former, a man of more ambition than his capacity seems to have warranted, even incurred the suspicion of meditating to set aside the heir of the crown, when the Black Prince should have sunk into the grave. Whether he were wronged or not by these conjectures, they certainly appear to have operated on those most concerned to take alarm at them. A parliament met in April 1376, wherein the general unpopularity of the king's administration, or the influence of the Prince of Wales, led to very remarkable consequences.* After granting a subsidy, the commons, "considering the evils of the country, through so many wars and other causes, and that the officers now in the king's service are insufficient without further assistance for so great a charge, pray that the council be strengthened by the addition of ten or twelve bishops, lords and others, to be constantly at hand, so that no business of weight should be dispatched without the consent of all; nor smaller matters without that of four or six."† The king pretended to come with alacrity into this measure, which was followed by a strict restraint on them and all other officers from taking presents in the course of their

* Most of our general historians have slurred over this important session. The best view, perhaps, of its secret history will be found in Lowth's Life of Wykeham; an instructive and elegant work, only to be blamed for marks of that academical point of honour, which makes a fellow of a college too indiscriminate an encomiast of its founder. Another modern book may be named with some commendation, though very inferior in its execution, Godwin's Life of Chaucer, of which the duke of Lancaster is the political hero.

† p. 322.

duty. After this, "the said commons appeared in parliament, protesting that they had the same good will as ever to assist the king with their lives and fortunes; but that it seemed to them, if their said liege lord had always possessed about him faithful counsellors and good officers, he would have been so rich, that he would have had no need of charging his commons with subsidy or tallage, considering the great ransoms of the French and Scotch kings, and of so many other prisoners; and that it appeared to be for the private advantage of some near the king, and of others by their collusion, that the king and kingdom are so impoverished, and the commons so ruined. And they promised the king, that if he would do speedy justice on such as should be found guilty, and take from them what law and reason permit, with what had been already granted in parliament, they will engage that he should be rich enough to maintain his wars for a long time, without much charging his people in any manner." They next proceeded to alledge three particular grievances; the removal of the staple from Calais, where it had been fixed by parliament, through the procurement and advice of the said private counsellors about the king; the participation of the same persons in lending money to the king at exorbitant usury; and their purchasing at a low rate for their own benefit old debts from the crown, the whole of which they had afterwards induced the king to repay to themselves. For these and for many other misdemeanours, the commons accused and impeached the lords Latimer

and Nevil, with four merchants, Lyons, Ellis, Peachey and Bury.* Latimer had been chamberlain, and Nevil held another office. The former was the friend and creature of the duke of Lancaster. Nor was this parliament at all nice in touching a point where kings least endure their interference. An ordinance was made, that "whereas many women prosecute the suits of others in courts of justice by way of maintenance, and to get profit thereby, which is displeasing to the king, he forbids any woman henceforward, and especially Alice Perrers, to do so, on pain of the said Alice forfeiting all her goods, and suffering banishment from the kingdom."†

The part which the prince of Wales, who had ever been distinguished for his respectful demeanour towards Edward, bore in this unprecedented opposition, is strong evidence of the jealousy with which he regarded the duke of Lancaster; and it was led in the House of Commons by Peter de la Mare, a servant of the earl of March, who by his marriage with Philippa, heiress of Lionel duke of Clarence, stood next after the young Prince Richard in lineal succession to the crown. The proceedings of this session were indeed highly popular. But no house of commons would have gone such lengths on the mere support of popular opinion, unless instigated and encouraged by higher authority. Without this, their petitions might perhaps have obtained, for

* Ibid. † p. 329.

the sake of subsidy, an immediate consent; but those who took the lead in preparing them must have remained unsheltered after a dissolution, to abide the vengeance of the crown, with no assurance that another parliament would espouse their cause as its own. Such indeed was their fate in the present instance. Soon after the dissolution of parliament, the prince of Wales, who, long sinking by fatal decay, had rallied his expiring energies for this domestic combat, left his inheritance to a child ten years old, Richard of Bordeaux. Immediately after this event, Lancaster recovered his influence; and the former favourites returned to court. Peter de la Mare was confined at Nottingham, where he remained two years. The citizens indeed attempted an insurrection, and threatened to burn the Savoy, Lancaster's residence, if de la Mare was not released; but the bishop of London succeeded in appeasing them.* A parliament met next year, which overthrew the work of its predecessor, restored those who had been impeached, and repealed the ordinance against Alice Perrers.† So little security will popular assemblies ever afford against arbitrary power, when deprived of regular leaders, and the consciousness of mutual fidelity.

The policy adopted by the prince of Wales and

* Anonym. Hist. Edw. III. ad calcem Hemingford, pp. 444..448. Walsingham gives a different reason. p. 192.

† Rot. Parl. p. 374. Not more than six or seven of the knights who had sat in the last parliament were returned to this, as appears by the writs in Prynne's 4th Register. p. 302. 311.

earl of March, in employing the house of commons as an engine of attack against an obnoxious ministry, was perfectly novel, and indicates a sensible change in the character of our constitution. In the reign of Edward II. parliament had little share in resisting the government; much more was effected by the barons, through risings of their feudal tenantry. Fifty years of authority better respected, of law better enforced, had rendered these more perilous, and of a more violent appearance than formerly. A surer resource presented itself in the increased weight of the lower house in parliament. And this indirect aristocratical influence gave a surprizing impulse to that assembly, and particularly tended to establish beyond question its controul over public abuses. Is it less just to remark, that it also tended to preserve the relation and harmony between each part and the other, and to prevent that jarring of emulation and jealousy, which, though generally found in the division of power between a noble and a popular estate, has scarcely ever caused a dissension, except in cases of little moment, between our two houses of parliament?

Richard II. Great increase of the power of the commons.

The commons had sustained with equal firmness and discretion a defensive war against arbitrary power under Edward III.; they advanced with very different steps towards his successor. Upon the king's death, though Richard's coronation took place without delay, and no proper regency was constituted, yet a council of twelve, whom the great officers of state were to obey, supplied its

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place to every effectual intent. Among these the duke of Lancaster was not numbered; and he retired from court in some disgust. In the first parliament of the young king, a large proportion of the knights who had sat in that which impeached the Lancastrian party were returned.* Peter de la Mare, now released from prison, was elected Speaker; a dignity which, according to some, he had filled in the Good Parliament, as that of the fiftieth of Edward III. was popularly styled; though the rolls do not mention either him, or any other as bearing that honourable name before Sir Thomas Hungerford in the parliament of the following year.† The prosecution against Alice Perrers was now revived; not, as far as appears, by direct impeachment of the commons; but articles were exhibited against her in the house of lords on the king's part, for breaking the ordinance made against her intermeddling at court; upon which she received judgement of banishment and forfeiture.‡ At the request of the lower house, the lords in the king's name appointed nine persons of different ranks; three bishops, two earls, two bannerets, and two bachelors to be a permanent council about the king, so that no business of importance should be transacted without their unanimous consent. The king was

* Walsingham, p. 200. says pæne omnes; but the list published in Prynne's 4th Register induces me to qualify this loose expression. Alice Perrers had bribed, he tells us, many of the lords, and all the lawyers of England; yet by the perseverance of these knights she was convicted.

† Rot. Parl. vol. ii. p. 374.

‡ vol. iii. p. 12.

even compelled to consent that, during his minority, the chancellor, treasurer, judges, and other chief officers, should be made in parliament; by which provision, combined with that of a parliamentary council, the whole executive government was transferred to the two houses. A petition, that none might be employed in the king's service, nor belong to his council, who had been formerly accused upon good grounds, struck at Lord Latimer, who had retained some degree of power in the new establishment. Another, suggesting that Gascony, Ireland, Artois and the Scottish marches were in danger of being lost for want of good officers, though it were so generally worded as to leave the means of remedy to the king's pleasure, yet shews a growing energy, and self-confidence in that assembly; which not many years before had thought the question of peace or war too high for their deliberation. Their subsidy was sufficiently liberal; but they took care to pray the king, that fit persons might be assigned for its receipt and disbursement, lest it should any way be diverted from the purposes of the war. Accordingly Walworth and Philpot, two eminent citizens of London, were appointed to this office and sworn in parliament to its execution.*

But whether through the wastefulness of government, or rather because Edward's legacy, the French war, like a ruinous and interminable lawsuit, exhausted all public contributions, there was

* Rot. Parl. vol. iii. p. 12.

an equally craving demand for subsidy at the next meeting of parliament. The commons now made a more serious stand. The speaker, Sir James Pickering, after the protestation against giving offence, which has since become more matter of form than perhaps it was then considered, reminded the lords of the council of a promise made to the last parliament, that if they would help the king for once with a large subsidy so as to enable him to undertake an expedition against the enemy, he trusted not to call on them again, but to support the war from his own revenues; in faith of which promise there had been granted the largest sum that any king of England had ever been suffered to levy within so short a time, to the utmost loss and inconvenience of the commons; part of which ought still to remain in the treasury, and render it unnecessary to burthen anew the exhausted people. To this Scrope, lord steward of the household, protesting that he knew not of any such promise, "made answer by order of the king, that, saving the honour and reverence of our lord the king, and the lords there present, the commons did not speak truth in asserting that part of the last subsidy should be still in the treasury; it being notorious that every penny had gone into the hands of Walworth and Philpot, appointed and sworn treasurers in the last parliament, to receive and expend it upon the purposes of the war, for which they had in effect disbursed the whole." Not satisfied with this general justification, the commons pressed for an account of

the expenditure. Scrope was again commissioned to answer, that "though it had never been seen, that of a subsidy or other grant made to the king in parliament or out of parliament by the commons any account had afterwards been rendered to the commons, or to any other except the king and his officers, yet the king to gratify them, of his own accord, without doing it by way of right, would have Walworth along with certain persons of the council exhibit to them in writing a clear account of the receipt and expenditure, upon condition that this should never be used as a precedent, nor inferred to be done otherwise than by the king's spontaneous command." The commons were again urged to provide for the public defence, being their own concern, as much as that of the king. But they merely shifted their ground, and had recourse to other pretences. They requested that five or six peers might come to them, in order to discuss this question of subsidy. The lords entirely rejected this proposal, and affirmed that such a proceeding had never been known except in the three last parliaments; but allowed that it had been the course to elect a committee of eight or ten from each house, to confer easily and without noise together. The commons acceded to this, and a committee of conference was appointed, though no result of their discussion appears upon the roll.

Upon examining the accounts submitted to them, these sturdy commoners raised a new objection. It appeared that large sums had been

expended upon garrisons in France and Ireland and other places beyond the kingdom, of which they protested themselves not liable to bear the charge. It was answered, that Gascony and the king's other dominions beyond sea were the outworks of England, nor could the people ever be secure from war at their thresholds, unless these were maintained. They lastly insisted that the king ought to be rich through the wealth that had devolved on him from his grandfather. But this was affirmed, in reply, to be merely sufficient for the payment of Edward's creditors. Thus driven from all their arguments, the commons finally consented to a moderate additional imposition upon the export of wool and leather, which were already subject to considerable duties, apologizing on account of their poverty for the slenderness of their grant.*

The necessities of government, however, let their cause be what it might, were by no means feigned; and a new parliament was assembled about seven months after the last, wherein the king, without waiting for a petition, informed the commons, that the treasurers were ready to exhibit their accounts before them. This was a signal victory after the reluctant and ungracious concession made to the last parliament. Nine persons of different ranks were appointed at the request of the commons to investigate the state of the revenue, and the disposition which had been

* Rot. Parl. p. 35—38.

made of the late king's personal estate. They ended by granting a poll-tax, which they pretended to think adequate to the supply required.* But in those times no one possessed any statistical knowledge, and every calculation which required it was subject to enormous error, of which we have already seen an eminent example.† In the next parliament (3 Ric. II.) it was set forth, that only £22,000 had been collected by the poll-tax, while the pay of the king's troops hired for the expedition to Britany, the pretext of the grant, had amounted for but half a year to £50,000. The king, in short, was more straightened than ever. His distresses gave no small advantage to the commons. Their speaker was instructed to declare that, as it appeared to them, if the affairs of their liege lord had been properly conducted at home and abroad, he could not have wanted aid of his commons, who now are poorer than before. They pray that, as the king was so much advanced in age and discretion, his perpetual council (appointed in his first parliament) might be discharged of their labours; and that instead of them, the five chief officers of state, to wit, the chancellor, treasurer, keeper of the privy seal, chamberlain, and steward of the household, might be named in parliament, and declared to the commons, as the king's sole counsellors, not removable before the next parliament. They required also a general commission to be made out, similar to

* Rot. Parl. p. 57.

† See p. 69 of this volume.

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that in the last session, giving powers to a certain number of peers and other distinguished persons, to inquire into the state of the household, as well as into all receipts and expenses since the king's accession.* The former petition seems to have been passed over;* but a commission as requested was made out to three prelates, three earls, three bannerets, three knights, and three citizens.† After guarding thus, as they conceived, against malversation, but in effect rather protecting their posterity than themselves, the commons prolonged the last imposition on wool and leather for another year.

It would be but repetition to make extracts from the rolls of the two next years; we have still the same tale; demand of subsidy on one side, remonstrance and endeavours at reformation on the other. After the tremendous insurrection of the villeins, in 1382, a parliament was convened to advise about repealing the charters of general manumission, extorted from the king by the pressure of circumstances. In this measure all concurred; but the commons were not afraid to say, that the late risings had been provoked by the burthens which a prodigal court had called for in the preceding session. Their language is un-

* Nevertheless, the commons repeated it in their schedule of petitions; and received an evasive answer, referring to an ordinance made in the first parliament of the king, the application of which is indefinite. p. 82.

† p. 73. In Rymer, t. vii. p. 250. the archbishop of York's name appears among these commissioners, which makes their number sixteen. But it is plain by the instrument, that only fifteen were meant to be appointed.

usually bold. "It seemed to them after full deliberation," they said, "that unless the administration of the kingdom were speedily reformed, the kingdom itself would be utterly lost, and ruined for ever, and therein their lord the king, with all the peers and commons, which God forbid. For true it is that there are such defects in the said administration, as well about the king's person, and his household, as in his courts of justice; and by grievous oppressions in the country through maintainers of suits, who are, as it were, kings in the country, that right and law are come to nothing, and the poor commons are from time to time so pillaged and ruined, partly by the king's purveyors of the household, and others who pay nothing for what they take, partly by the subsidies and tallages raised upon them, and besides by the oppressive behaviour of the servants of the king and other lords, and especially of the aforesaid maintainers of suits, that they are reduced to greater poverty and discomfort than ever they were before. And moreover though great sums have been continually granted by and levied upon them, for the defence of the kingdom, yet they are not the better defended against their enemies, but every year are plundered and wasted by sea and land, without any relief. Which calamities the said poor commons, who lately used to live in honour and prosperity, can no longer endure. And to speak the real truth, these injuries lately done to the poorer commons more than they ever suffered before, caused them to rise,

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and to commit the mischief done in their late riot; and there is still cause to fear greater evils, if sufficient remedy be not timely provided against the outrages and oppressions aforesaid. Wherefore may it please our lord the king, and the noble peers of the realm now assembled in this parliament, to provide such remedy and amendment as to the said administration, that the state and dignity of the king in the first place, and of the lords may be preserved, as the commons have always desired; and the commons may be put in peace; removing, as soon as they can be detected, evil ministers and counsellors, and putting in their stead the best and most sufficient, and taking away all the bad practices which have led to the last rising, or else none can imagine that this kingdom can long subsist without greater misfortunes than it ever endured. And for God's sake let it not be forgotten, that there be put about the king and of his council, the best lords and knights that can be found in the kingdom.

"And be it known (the entry proceeds) that after the king our lord with the peers of the realm and his council had taken advice upon these requests made to him for his good and his kingdom's, as it really appeared to him, willed and granted, that certain bishops, lords and others should be appointed to survey and examine in privy council both the government of the king's person, and of his household, and to suggest proper remedies wherever necessary, and report them to the king. And it was said by the peers in par-

liament, that as it seemed to them, if reform of government were to take place throughout the kingdom, it should begin by the chief member, which is the king himself, and so from person to person, as well churchmen as others, and place to place, from higher to lower, without sparing any degree."* A considerable number of commissioners were accordingly appointed, whether by the king alone, or in parliament, does not appear; the latter, however, is more probable. They seem to have made some progress in the work of reformation, for we find that the officers of the household were sworn to observe their regulations. But in all likelihood these were soon neglected.

It is not wonderful, that with such feelings of resentment towards the crown, the commons were backward in granting subsidies. Perhaps the king would not have obtained one at all, if he had not withheld his charter of pardon for all offences committed during the insurrection. This was absolutely necessary to restore quiet among the people; and though the members of the commons had certainly not been insurgents, yet inevitable irregularities had occurred in quelling the tumults, which would have put them too much in the power of those unworthy men who filled the benches of justice under Richard. The king declared that it was unusual to grant a pardon without a subsidy; the commons still answered, that

* Rot. Parl. 5 R. II. p. 100.

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they would consider about that matter; and the king instantly rejoined, that he would consider about his pardon, (s'aviseroit de sa dite grace) till they had done what they ought. They renewed at length the usual tax on wool and leather.*

This extraordinary assumption of power by the commons was not merely owing to the king's poverty. It was encouraged by the natural feebleness of a disunited government. The high rank and ambitious spirit of Lancaster gave him no little influence, though contending with many enemies at court, as well as the ill will of the people. Thomas of Woodstock, the king's youngest uncle, more able and turbulent than Lancaster, became, as he grew older, an eager competitor for power, which he sought through the channel of popularity. The earls of March, Arundel and Warwick bore a considerable part, and were the favourites of parliament. Even Lancaster, after a few years, seems to have fallen into popular courses, and recovered some share of public esteem. He was at the head of the reforming commission in the fifth of Richard II., though he had been studiously excluded from those preceding. We cannot hope to disentangle the intrigues of this remote age, a province of history where our records are of no avail, and as to which the chroniclers are very slightly informed. So far as we may conjecture, Lancaster, finding his station insecure at court, began to solicit the fa-

* p. 104.

vour of the commons, whose hatred of the administration abated their former hostility towards him.*

Character of Richard.

The character of Richard II. was now developing itself, and the hopes excited by his remarkable presence of mind in confronting the rioters on Blackheath were rapidly destroyed. Not that he was wanting in capacity, as has been sometimes imagined. For if we measure intellectual power by the greatest exertion it ever displays, rather than by its average results, Richard II. was a man of considerable talents. He possessed, along with much dissimulation, a decisive promptitude in seizing the critical moment for action. Of this quality, besides his celebrated behaviour towards the insurgents, he gave striking evidence in several circumstances which we shall have shortly to notice. But his ordinary conduct belied the abilities which on these rare occasions shone forth, and rendered them ineffectual for his security. Extreme pride and violence, with an inordinate partiality for the most worthless favourites, were his predominant characteristics. In the latter quality, and in the events of his reign, he forms a pretty exact parallel to Edward II. Scrope, lord chancellor, who had been appointed in parliament,

* The commons granted a subsidy, 7 R. II. to support Lancaster's war in Castile. R. P. p. 284. Whether the populace changed their opinion of him, I know not. He was still disliked by them two years before. The insurgents of 1382 are said to have compelled men to swear that they would obey king Richard and the commons, and that they would accept no king named John. Walsingham, p. 248.

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and was understood to be irremovable without its concurrence, lost the great seal for refusing to set it to some prodigal grants. Upon a slight quarrel with Archbishop Courtney, the king ordered his temporalities to be seized, the execution of which, Michael de la Pole, his new chancellor, and a favourite of his own, could hardly prevent. This was accompanied with indecent and outrageous expressions of anger, unworthy of his station, and of those whom he insulted.*

He acquires more power on his majority.

Though no king could be less respectable than Richard, yet the constitution invested a sovereign with such ample prerogative, that it was far less easy to resist his personal exercise of power, than the unsettled councils of a minority. In the parliament 6 R. II. sess. 2. the commons pray certain lords whom they name, to be assigned as their advisers. This had been permitted in the two last sessions without exception.† But the king, in granting their request, reserved his right of naming any others.‡ Though the commons did not relax in their importunities for the redress of general grievances, they did not venture to intermeddle as before with the conduct of administration. They did not even object to the grant of the marquisate of Dublin, with almost a princely dominion over Ireland; which enormous donation was confirmed by act of parliament to Vere, a favourite of the king.§ A petition that the officers

* Walsingh. pp. 290. 315. 317.
† Rot. Parl. 5 R. II. p. 100. 6 R. II. sess. 1. p. 134.
‡ p. 145.
§ Rot. Parl. 9 R. II. p. 209.

of state should annually visit and inquire into his household, was answered, that the king would do what he pleased.* Yet this was little in comparison of their former proceedings.

Proceedings of parliament in the tenth of Richard.

There is nothing, however, more deceitful to a monarch, unsupported by an armed force, and destitute of wary advisers, than this submission of his people. A single effort was enough to overturn his government. Parliament met in the tenth year of his reign, steadily determined to reform the administration, and especially to punish its chief leader, Michael de la Pole, earl of Suffolk, and lord chancellor. According to the remarkable narration of a contemporary historian,† too circumstantial to be rejected, but rendered somewhat doubtful by the silence of all other writers, and of the parliamentary roll, the king was loitering at his palace of Eltham, when he received a message from the two houses requesting the dismissal of Suffolk, since they had matter to alledge him that they could not move, while he kept the office of chancellor. Richard, with his usual intemperance, answered that he would not for their request remove the meanest scullion from his kitchen. They returned a positive refusal to proceed on any public business, until the king should appear personally in parliament, and displace the

* p. 213. It is however asserted in the articles of impeachment against Suffolk, and admitted by his defence, that nine lords had been appointed in the last parliament, viz. 9 R. II. to inquire into the state of the household, and reform whatever was amiss. But nothing of this appears in the roll.

† Knyghton, in Twysden x. Script. col. 2680.

chancellor. The king required forty knights to be deputed from the rest, to inform him clearly of their wishes. But the commons declined a proposal, in which they feared, or affected to fear, some treachery. At length the duke of Glocester and Arundel bishop of Ely were commissioned to speak the sense of parliament, and they delivered it, if we may still believe what we read, in very extraordinary language, asserting that there was an ancient statute, according to which, if the king absented himself from parliament without just cause during forty days, which he had now exceeded, every man might return without permission to his own country; and moreover there was another statute, and (as they might more truly say) a precedent of no remote date, that if a king, by bad counsel, or his own folly and obstinacy, alienated himself from his people, and would not govern according to the laws of the land, and the advice of the peers, but madly and wantonly followed his own single will, it should be lawful for them with the common assent of the people to expel him from his throne, and elevate to it some near kinsman of the royal blood. By this discourse the king was induced to meet his parliament, where Suffolk was removed from his office, and the impeachment against him commenced.*

* Upon full consideration, I am much inclined to give credit to this passage of Knyghton, as to the main facts; and perhaps even the speech of Glocester and the bishop of Ely is more likely to have been made public by them, than invented by so jejune an historian. Walsingham indeed says nothing of the matter; but he is

The charges against this minister, without being wholly frivolous, were not so weighty as the clamour of the commons might have led us to expect. Besides forfeiting all his grants from the crown, he was committed to prison, there to remain till he should have paid such fine as the king might impose; a sentence that would have been outrageously severe in many cases, though little more than nugatory in the present.*

Impeachment of Suffolk.

This was the second precedent of that grand constitutional resource, parliamentary impeachment: and more remarkable, from the eminence of the person attacked, than that of Lord Latimer, in the fiftieth year of Edward III.† The commons were content to wave the prosecution of any other ministers; but they rather chose a scheme of reforming the administration, which should avert both the necessity of punishment, and the malversations that provoked it. They petitioned the king

Commission of reform.

so unequally informed and so frequently defective, that we can draw no strong inference from his silence. What most weighs with me, is that parliament met on Oct. 1, 1387, and was not dissolved till Nov. 28; a longer period than the business done in it seems to have required; and also that Suffolk, who opened the session as chancellor, is styled "darrein chancellor" in the articles of impeachment against him; so that he must have been removed in the interval, which tallies with Knyghton's story. Besides, it is plain from the famous questions subsequently put by the king to his judges at Nottingham, that both the right of retiring without a regular dissolution, and the precedent of Edward II. had been discussed in parliament, which does not appear any where else than in Knyghton.

* Rot. Parl. vol. iii. p. 219.

† Articles had been exhibited by the chancellor before the peers, in the seventh of the king, against Spencer, bishop of Norwich, who had led a considerable army into a disastrous expedition against the Flemings, adherents to the anti-pope Clement in the schism. This crusade had been exceedingly popular, but its ill success had the usual effect. The commons were not parties in this proceeding. Rot. Parl. p. 153.

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to ordain in parliament certain chief officers of his household, and other lords of his council, with power to reform those abuses, by which his crown was so much blemished, that the laws were not kept, and his revenues were dilapidated, confirming by a statute a commission for a year, and forbidding, under heavy penalties, any one from opposing, in private or openly, what they should advise.* With this the king complied, and a commission founded upon the prayer of parliament was established by statute. It comprehended fourteen persons of the highest eminence for rank and general estimation; princes of the blood and ancient servants of the crown, by whom its prerogatives were not likely to be unnecessarily impaired. In fact the principle of this commission, without looking back at the precedents in the reigns of John, Henry III., and Edward II., which yet were not without their weight as constitutional analogies, was merely that which the commons had repeatedly maintained during the minority of the present king, and which had produced the former commissions of reform in the third and fifth years of his reign. These were upon the whole nearly the same in their operation. It must be owned there was a more extensive sway virtually given to the lords now appointed, by the penalties imposed on any who should endeavour to obstruct what they might advise; the design as well as tendency of which was no doubt to throw the whole adminis-

* Rot. Parl. p. 221.

tration into their hands during the period of this commission.

Those who have written our history with more or less of a Tory bias exclaim against this parliamentary commission as an unwarrantable violation of the king's sovereignty, and even impartial men are struck at first sight by a measure that seems to overset the natural balance of our constitution. But it would be unfair to blame either those concerned in this commission, some of whose names at least have been handed down with unquestioned respect, or those high-spirited representatives of the people, whose patriot firmness has been hitherto commanding all our sympathy and gratitude, unless we could distinctly pronounce by what gentler means they could restrain the excesses of government. Thirteen parliaments had already met since the accession of Richard; in all the same remonstrances had been repeated, and the same promises renewed. Subsidies, more frequent than in any former reign, had been granted for the supposed exigencies of the war; but this was no longer illuminated by those dazzling victories, which give to fortune the mien of wisdom; the coasts of England were perpetually ravaged, and her trade destroyed; while the administration incurred the suspicion of diverting to private uses that treasure which they so feebly and unsuccessfully applied to the public service. No voice of his people, until it spoke in thunder, would stop an intoxicated boy in the wasteful career of dissipation. He loved festivals and pageants, the pre-

vailing folly of his time, with unusual frivolity; and his ordinary living is represented as beyond comparison more shewy and sumptuous than even that of his magnificent and chivalrous predecessor. Acts of parliament were no adequate barriers to his misgovernment. "Of what avail are statutes," says Walsingham, "since the king with his privy council is wont to abolish what parliament has just enacted!"* The constant prayer of the commons in every session, that former statutes might be kept in force, is no slight presumption that they were not secure of being regarded. It may be true that Edward III.'s government had been full as arbitrary, though not so unwise as his grandson's; but this is the stronger argument, that nothing less than an extraordinary remedy could preserve the still unstable liberties of England.

The best plea that could be made for Richard was his inexperience, and the misguiding suggestions of favourites. This, however, made it more necessary to remove those false advisers, and to supply that inexperience. Unquestionably the choice of ministers is reposed in the sovereign; a trust, like every other attribute of legitimate power, for the public good; not, what no legitimate power can ever be, the instrument of selfishness or caprice. There is something more sacred than the prerogative, or even than the constitution; the public weal, for which all powers are granted, and to which they must all be referred.

* Rot. Parl. p. 281.

For this public weal it is confessed to be sometimes necessary to shake the possessor of the throne out of his seat; could it never be permitted to suspend, though but indirectly and for a time, the positive exercise of misapplied prerogatives? He has learned in a very different school from myself, who denies to parliament at the present day a preventive as well as vindictive controul over the administration of affairs; a right of resisting, by those means which lie within its sphere, the appointment of unfit ministers. These means are now indirect; they need not be the less effectual, and they are certainly more salutary on that account. But we must not make our notions of the constitution in its perfect symmetry of manhood, the measure of its infantine proportions, nor expect from a parliament just struggling into life, and "pawing to get free its hinder parts," the regularity of definite and habitual power.

It is assumed rather too lightly by some of those historians to whom I have alluded, that these commissioners, though but appointed for a twelvemonth, designed to retain longer, or would not in fact have surrendered their authority. There is certainly a danger in these delegations of pre-eminent trust; but I think it more formidable in a republican form, than under such a government as our own. The spirit of the people, the letter of the law, were both so decidedly monarchical, that no glaring attempt of the commissioners to keep the helm continually in their hands, though it had been in the king's name, would have had a fair pro-

bability of success. And an oligarchy of fourteen persons, different in rank and profession, even if we should imputé criminal designs to all of them, was ill calculated for permanent union. Indeed the facility with which Richard re-assumed his full powers two years afterwards, when misconduct had rendered his circumstances far more unfavourable, gives the corroboration of experience to this reasoning. By yielding to the will of his parliament, and to a temporary suspension of prerogative, this unfortunate prince might probably have reigned long and peacefully; the contrary course of acting led eventually to his deposition and miserable death.

Answers of the judges to Richard's questions.

Before the dissolution of parliament, Richard made a verbal protestation, that nothing done therein should be in prejudice of his rights; a reservation not unusual when any remarkable concession was made, but which could not decently be interpreted, whatever he might mean, as a dissent from the statute just passed. Some months had intervened, when the king, who had already released Suffolk from prison and restored him to his favour, procured from the judges whom he had summoned to Nottingham, a most convenient set of answers to questions concerning the late proceedings in parliament. Tresilian and Belknap, chief justices of the King's Bench and Common Pleas, with several other judges, gave it under their seals, that the late statute and commission were derogatory to the prerogative; that all who procured it to be passed, or persuaded or compelled

the king to consent to it, were guilty of treason: that the king's business must be proceeded upon before any other in parliament; that he may put an end to the session at his pleasure; that his ministers cannot be impeached without his consent; that any members of parliament contravening the three last articles, incur the penalties of treason, and especially he who moved for the sentence of deposition against Edward II. to be read; and that the judgment against the earl of Suffolk might be revoked as altogether erroneous.

Subsequent revolution.

These answers, perhaps extorted by menaces, as all the judges, except Tresilian, protested before the next parliament, were for the most part servile and unconstitutional. The indignation which they excited, and the measures successfully taken to withstand the king's designs, belong to general history; but I shall pass slightly over that season of turbulence, which afforded no legitimate precedent to our constitutional annals. Of the five lords appellants, as they were called, Glocester, Derby, Nottingham, Warwick, and Arundel, the three former, at least, have little claim to our esteem; but in every age, it is the sophism of malignant and peevish men to traduce the cause of freedom itself, on account of the interested motives by which its ostensible advocates have frequently been actuated. The parliament, who had the country thoroughly with them, acted no doubt honestly, but with an inattention to the rules of law, culpable indeed, yet from which the most civilized of their successors, in the heat of

passion and triumph, have scarcely been exempt. Whether all with whom they dealt severely, some of them apparently of good previous reputation, merited such punishment, is more than, upon uncertain evidence, a modern writer can profess to decide.*

Notwithstanding the death or exile of all Richard's favourites, and the oath taken not only by parliament, but by every class of the people to stand by the lords appellants, we find him, after about a year, suddenly annihilating their pretensions, and snatching the reins again without obstruction. The secret cause of this event is among the many obscurities that attend the history of his reign. It was conducted with a spirit and activity which broke out two or three times in the course of his imprudent life; but we may conjecture that he had the advantage of disunion among his enemies. For some years after this, the king's administration was prudent. The great seal, which he took away from Archbishop Arundel, he gave to Wykeham, bishop of Winchester, another member of the reforming commission, but a man of great moderation and political experience. Some time after, he restored the seal to Arundel, and reinstated the duke of Glocester in the council. The duke of Lancaster, who had been absent during the transactions of the tenth and eleventh

* The judgement against Simon de Burley, one of those who were executed on this occasion, upon impeachment of the commons, was reversed under Henry IV.; a fair presumption of its injustice. Rot. Parl. vol. iii. p. 464.

years of the king, in prosecution of his Castilian war, formed a link between the parties, and seems to have maintained some share of public favour.

Greater harmony between the king and parliament.

There was now a more apparent harmony between the court and the parliament. It seems to have been tacitly agreed that they should not interfere with the king's household expenses; and they gratified him in a point where his honour had been most wounded, declaring his prerogative to be as high and unimpaired as that of his predecessors, and repealing the pretended statute by virtue of which Edward II. was said to have been deposed.* They were provident enough, however, to grant conditional subsidies, to be levied only in case of a royal expedition against the enemy; and several were accordingly remitted by proclamation, this condition not being fulfilled. Richard never ventured to recal his favourites, though he testified his unabated affection for Vere by a pompous funeral. Few complaints, unequivocally affecting the ministry, were presented by the commons. In one parliament, the chancellor, treasurer, and council resigned their offices, submitting themselves to its judgement, in case any matter of accusation should be alledged against them. The commons, after a day's deliberation, probably to make their approbation appear more solemn, declared in full parliament, that nothing amiss had been found in the conduct of these ministers, and that they held them to have faithfully discharged

* Rot. Parl. 14 R. II. p. 279. 15 R. II. p. 286.

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their duties. The king re-instated them accordingly; with a protestation that this should not be made a precedent, and that it was his right to change his servants at pleasure.*

Disunion among some leading peers.

But this summer season was not to last for ever. Richard had but dissembled with those concerned in the transactions of 1388, none of whom he could ever forgive. These lords, in lapse of time were divided among each other. The earls of Derby and Nottingham were brought into the king's interest. The earl of Arundel came to an open breach with the duke of Lancaster, whose pardon he was compelled to ask for an unfounded accusation in parliament.† Glocester's ungoverned ambition, elated by popularity, could not brook the ascendancy of his brother Lancaster, who was much less odious to the king. He had constantly urged and defended the concession of Guienne to this prince, to be held for life, reserving only his liege homage to Richard, as king of France;‡ a grant, as unpopular among the natives of that country, as it was derogatory to the crown; but Lancaster was not much indebted to his brother for assistance, which was only given in order to diminish his influence in England. The truce with France, and the king's French marriage, which Lancaster supported, were passionately opposed by Glocester. And the latter had given keener provocation, by speaking con-

* Rot. Parl. 13 R. II. p. 256.
† 17 R. II. p. 313.
‡ Rymer, t. vii. p. 583. 659.

temptuously of that mis-alliance with Katharine Swineford, which contaminated the blood of Plantagenet. To the parliament summoned in the 20th of Richard, one object of which was to legitimate the duke of Lancaster's ante-nuptial children by this lady, neither Glocester nor Arundel would repair. There passed in this assembly something remarkable, as it exhibits not only the arbitrary temper of the king, à point by no means doubtful, but the inefficiency of the commons to resist it, without support from political confederacies of the nobility. The circumstances are thus related in the record.

Richard's prosecution of Haxey.

During the session, the king sent for the lords into parliament one afternoon, and told them how he had heard of certain articles of complaint made by the commons in conference with them a few days before, some of which appeared to the king against his royalty, estate and liberty, and commanded the chancellor to inform him fully as to this. The chancellor accordingly related the whole matter, which consisted of four alledged grievances; namely, that sheriffs and escheators, notwithstanding a statute, are continued in their offices beyond a year;* that the Scottish marches were not well kept; that the statute against wearing great men's

* Hume has represented this, as if the commons had petitioned for the continuance of sheriffs beyond a year, and grounds upon this mistake part of his defence of Richard II. (note to vol. ii. p. 270. 4to edit.) For this he refers to Cotton's Abridgement; whether rightly or not, I cannot say, being little acquainted with that inaccurate book, upon which it is unfortunate that Hume relied so much. The passage from Walsingham in the same note is also wholly per-

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liveries was disregarded; and lastly, that the excessive charges of the king's household ought to be diminished, arising from the multitude of bishops, and of ladies who are there maintained at his cost.

Upon this information the king declared to the lords, that through God's gift he is by lineal right of inheritance king of England, and will have the royalty and freedom of his crown, from which some of these articles derogate. The first petition, that sheriffs should never remain in office beyond a year, he rejected; but, passing lightly over the rest, took most offence, that the commons, who are his lieges, should take on themselves to make any ordinance respecting his royal person or household, or those whom he might please to have about him. He enjoined therefore the lords to declare plainly to the commons his pleasure in this matter; and especially directed the duke of Lancaster to make the speaker give up the name of the person who presented a bill for this last article in the lower house.

The commons were in no state to resist this unexpected promptitude of action in the king. They surrendered the obnoxious bill, with its proposer, one Thomas Haxey, and with great humility made excuse, that they never designed to give offence to his majesty, nor to interfere with his household

verted; as the reader will discover without further observation. An historian must be strangely warped, who quotes a passage explicitly complaining of illegal acts in order to infer that those very acts were legal.

or attendants, knowing well that such things do not belong to them, but to the king alone; but merely to draw his attention, that he might act therein as should please him best. The king forgave these pitiful suppliants; but Haxey was adjudged in parliament to suffer death as a traitor. As, however, he was a clerk,* the archbishop of Canterbury, at the head of the prelates, obtained of the king that his life might be spared, and that they might have the custody of his person; protesting that this was not claimed by way of right, but merely of the king's grace.†

This was an open defiance of parliament and a declaration of arbitrary power. For it would be impossible to contend, that after the repeated instances of controul over public expenditure by the commons since the 50th of Edward III., this principle was novel and unauthorized by the constitution; or that the right of free speech demanded

* The church would perhaps have interfered in behalf of Haxey, if he had only received the tonsure. But it seems that he was actually in orders; for the record calls him Sir Thomas Haxey, a title at that time regularly given to the parson of a parish. If this be so, it is a remarkable authority for the clergy's capacity of sitting in parliament.

† Rot. Parl. 20 R. II. p. 339. In Henry IV.'s first parliament, the commons petitioned for Haxey's restoration, and truly say, that his sentence was en ancantissement des custumes de la commune. p. 434. His judgement was reversed by both houses, as having past de volonté du Roy Richard en contre droit, et la course quel avoit este devant en parlement. p. 430. There can be no doubt with any man who looks attentively at the passages relative to Haxey, that he was a member of parliament; though this was questioned a few years ago by the committee of the house of commons who made a report on the right of the clergy to be elected; a right which, I am inclined to believe, did exist down to the Reformation, as the grounds alledged for Nowell's expulsion in the first of Mary, besides this instance of Haxey, conspire to prove, though it has since been lost by disuse.

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Arbitrary measures of the king.

by them in every parliament was not a real and indisputable privilege. The king, however, was completely successful, and having proved the feebleness of the commons, fell next upon those he more dreaded. By a skilful piece of treachery he seized the duke of Glocester, and spread consternation among all his party. A parliament was summoned, in which the only struggle was to outdo the king's wishes, and thus to efface their former transgressions.* Glocester, who had been murdered at Calais, was attainted after his death; Arundel was beheaded, his brother the archbishop of Canterbury deposed and banished, Warwick and Cobham sent beyond sea. The commission of the tenth, the proceedings in parliament of the eleventh year of the king, were annulled. The answers of the judges to the questions put at Nottingham, which had been punished with death and exile, were pronounced by parliament to be just and legal. It was declared high treason to procure the repeal of any judgement against persons therein impeached. Their issue male were disabled from ever sitting in parliament, or holding place in council. These violent ordinances, as if the precedent they were then overturning had not shielded itself with the same sanction, were sworn to by parliament upon the cross of Canterbury, and confirmed by a national oath, with the penalty

* This assembly, if we may trust the anonymous author of the life of Richard II., published by Hearne, was surrounded by the king's troops. p. 133.

of excommunication denounced against its infringers. Of those recorded to have bound themselves by this adjuration to Richard, far the greater part had touched the same relics for Glocester and Arundel ten years before, and two years afterwards swore allegiance to Henry of Lancaster.*

In the fervour of prosecution this parliament could hardly go beyond that whose acts they were annulling: and each is alike unworthy to be remembered in the way of precedent. But the leaders of the former, though vindictive and turbulent, had a concern for the public interest; and after punishing their enemies, left the government upon its right foundation. In this, all regard for liberty was extinct; and the commons set the dangerous precedent of granting the king a subsidy upon wool during his life. This remarkable act of servility was accompanied by another, less unexampled, but, as it proved, of more ruinous tendency. The petitions of the commons not having been answered during the session, which they were always anxious to conclude, a commission was granted for twelve peers and six commoners to sit after the dissolution, and "examine, answer, and fully determine as well all the said petitions, and the matters therein comprized, as all other matters and things moved in the king's presence, and all things incident thereto not yet determined, as shall seem best to them."† The "other matters" mentioned above were, I suppose,

*, Rot. Parl. 21 R. II. p. 347. † 21 R. II. p. 369.

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private petitions to the king's council in parliament, which had been frequently dispatched after a dissolution. For in the statute which establishes this commission, 21 R. II. c. 16. no powers are committed, but those of examining petitions; which, if it does not confirm the charge afterwards alledged against Richard of falsifying the parliament roll, must at least be considered as limiting and explaining the terms of the latter. Such a trust had been committed to some lords of the council eight years before, in very peaceful times; and it was even requested, that the same might be done in future parliaments.* But it is obvious what a latitude this gave to a prevailing faction. These eighteen commissioners, or some of them, (for there were who disliked the turn of affairs) usurped the full rights of the legislature, which undoubtedly were only delegated in respect of business already commenced.† They imposed a perpetual oath on

* 13 R. II. p. 256.

† This proceeding was made one of the articles of charge against Richard in the following terms: Item, in parliamento ultimo celebrato apud Salopiam, idem Rex proponens opprimere populum suum procuravit subtiliter et fecit concedi, quod potestas parliamenti de consensu omnium statuum regni sui remaneret apud quasdam certas personas ad terminandum, dissoluto parliamento, certas petitiones in eodem parliamento porrectas protunc minimè expeditas. Cujus concessionis colore personæ sic deputatæ processerunt ad alia generaliter parliamentum illud tangentia; et hoc de voluntate regis; in derogationem statûs parliamenti, et in magnum incommodum totius regni, et perniciosum exemplum. Et ut super factis eorum hujusmodi aliquem colorem et auctoritatem viderentur habere, rex fecit rotulos parliamenti pro voto suo mutari et deleri, contra effectum consensionis prædictæ. Rot. Parl. 1 H. IV. vol. iii. p. 418. Whether the last accusation, of altering the parliamentary roll, be true or not, there is enough left in it to prove every thing I have asserted in the text. From this it is sufficiently manifest, how unfairly Carte and Hume have drawn a parallel between this self-deputed legislative commission, and that appointed by parliament to

prelates and lords for all time to come, to be taken before obtaining livery of their lands, that they would maintain the statutes and ordinances made by this parliament, or "afterwards by the lords and knights having power committed to them by the same." They declared it high treason to disobey their ordinances. They annulled the patents of the dukes of Hereford and Norfolk, and adjudged Henry Bowet, the former's chaplain, who had advised him to petition for his inheritance, to the penalties of treason.* And thus having obtained a revenue for life, and the power of parliament being notoriously usurped by a knot of his creatures, the king was little likely to meet his people again, and became as truly absolute as his ambition could require.

Quarrel of the Dukes of Hereford and Norfolk.

It had been necessary for this purpose to subjugate the ancient nobility. For the English constitution gave them such paramount rights, that it was impossible either to make them surrender their country's freedom, or to destroy it without their consent. But several of the chief men had fallen or were involved with the party of Glocester. Two, who having once belonged to it, had lately plunged into the depths of infamy to ruin their former friends, were still perfectly obnoxious to the king, who never forgave their original sin. These two, Henry of Bolingbroke, earl of Derby, and Mowbray, earl of Nottingham, now dukes of

reform the administration eleven years before.

* p. 372. 385.

Hereford and Norfolk, the most powerful of the remaining nobility, were by a singular conjuncture thrown, as it were, at the king's feet. Of the political mysteries which this reign affords, none is more inexplicable than the quarrel of these peers. In the parliament at Shrewsbury, in 1398, Hereford was called upon by the king to relate what had passed between the duke of Norfolk and himself, in slander of his majesty. He detailed a pretty long and not improbable conversation, in which Norfolk had asserted the king's intention of destroying them both for their old offence in impeaching his ministers. Norfolk had only to deny the charge, and throw his gauntlet at the accuser. It was referred to the eighteen commissioners who sat after the dissolution, and a trial by combat was awarded. But, when this after many delays was about to take place at Coventry, Richard interfered and settled the dispute by condemning Hereford to banishment for ten years, and Norfolk for life. This strange determination, which treated both as guilty, where only one could be so, seems to admit no other solution than the king's desire to rid himself of two peers whom he feared and hated at a blow. But it is difficult to understand by what means he drew the crafty Bolingbroke into his snare.* However this might have been, he now

* Besides the contemporary historians, we may read a full narrative of these proceedings in the rolls of parliament, vol. iii. p. 382. It appears that Mowbray was the most offending party, since, independently of Hereford's accusation, he is charged with openly maintaining the appeals made in the false parliament of the eleventh of the king. But the banishment of his accuser was wholly unjustifi-

threw away all appearance of moderate government. The indignities he had suffered in the eleventh year of his reign were still at his heart, a desire to revenge which seems to have been the main spring of his conduct. Though a general pardon of those proceedings had been granted, not only at the time, but in his own last parliament, he made use of them as a pretence to extort money from seventeen counties, to whom he imputed a share in the rebellion. He compelled men to confess under their seals that they had been guilty of treason, and to give blank obligations, which his officers filled up with large sums.* Upon the death of the duke of Lancaster, who had passively complied throughout all these transactions, Richard refused livery of his inheritance to Hereford, whose exile implied no crime, and who had letters patent enabling him to make his attorney for that purpose during its continuance. In short, his government for nearly two years was altogether tyrannical; and, upon the same principles that cost James II. his throne, it was unquestionably far more necessary, unless our fathers would have abandoned all thought of liberty, to expel Richard II. Far be it from us to extenuate the treachery of the Percies towards this unhappy prince, or the cruel circum-

Richard's tyranny.

Necessity for deposing him.

able by any motives that we can discover. It is strange that Carte should express surprize at the sentence upon the duke of Norfolk, while he seems to consider that upon Hereford as very equitable. But he viewed the whole of this reign, and of those that ensued, with the jaundiced eye of Jacobitism.

* Rot. Parl. 1 H. IV. p. 420. 426. Walsingham, p. 353. 357. Otterburn, p. 199. Vita Ric. II. p. 147.

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stances of his death, or in any way to extol either his successor, or the chief men of that time, most of whom were ambitious and faithless; but after such long experience of the king's arbitrary, dissembling and revengeful temper, I see no other safe course, in the actual state of the constitution, than what the nation concurred in pursuing.

The reign of Richard II. is, in a constitutional light, the most interesting part of our earlier history; and it has been the most imperfectly written. Some have misrepresented the truth through prejudice, and others through carelessness. It is only to be understood, and indeed there are great difficulties in the way of understanding it at all, by a perusal of the rolls of parliament, with some assistance from the contemporary historians, Walsingham, Knyghton, the anonymous biographer published by Hearne, and Froissart. These, I must remark, except occasionally the last, are extremely hostile to Richard; and although we are far from being bound to acquiesce in their opinions, it is at least unwarrantable in modern writers to sprinkle their margins with references to such authority in support of positions decidedly opposite.*

Circumstances attending Henry IV.'s accession.

The revolution which elevated Henry IV. to the throne was certainly so far accomplished by force,

* It is fair to observe, that Froissart's testimony makes most in favour of the king, or rather against his enemies, where it is most valuable, that is, in his account of what he heard in the English court in 1395. l. iv. c. 62. where he gives a very indifferent character of the duke of Glocester. In general, this writer is ill informed of English affairs, and undeserving to be quoted as an authority.

that the king was in captivity, and those who might still adhere to him in no condition to support his authority. But the sincere concurrence, which most of the prelates and nobility, with the mass of the people, gave to changes that could not have been otherwise effected by one so unprovided with foreign support as Henry, proves this revolution to have been, if not an indispensable, yet a national act, and should prevent our considering the Lancastrian kings as usurpers of the throne. Nothing indeed looks so much like usurpation in the whole transaction, as Henry's remarkable challenge of the crown, insinuating, though not avowing, as Hume has justly animadverted upon it, a false and ridiculous title by right line of descent, and one equally unwarrantable by conquest. The course of proceedings is worthy of notice. As the renunciation of Richard might well pass for the effect of compulsion, there was a strong reason for propping up its instability by a solemn deposition from the throne, founded upon specific charges of misgovernment. Again, as the right of dethroning a monarch was no where found in the law, it was equally requisite to support this assumption of power by an actual abdication. But as neither one nor the other filled the duke of Lancaster's wishes, who was not contented with owing a crown to election, nor seemed altogether to account for the exclusion of the house of March, he devised this claim, which was preferred in the vacancy of the throne, Richard's cession having been read and approved in parliament, and the sentence of depo-

sition, "out of abundant caution, and to remove all scruple," solemnly passed by seven commissioners, appointed out of the several estates. "After which challenge and claim," says the record, "the lords spiritual and temporal, and all the estates there present, being asked separately and together, what they thought of the said challenge and claim, the said estates, with the whole people, without any difficulty or delay, consented that the said duke should reign over them."* The claim of Henry, as opposed to that of the earl of March, was indeed ridiculous; but it is by no means evident that, in such cases of extreme urgency as leave no security for the common weal but the deposition of a reigning prince, there rests any positive obligation upon the estates of the realm to fill his place with the nearest heir. A revolution of this kind seems rather to defeat and confound all prior titles, though in the new settlement it will commonly be prudent, as well as equitable, to treat them with some regard. Were this otherwise, it would be hard to say, why William III. reigned to the exclusion of Anne, or even of the Pretender, who had surely committed no offence at that time; or why (if such indeed be the true construction of the Act of Settlement) the more distant branches of the royal stock, descendants of Henry VII. and earlier kings, have been cut off from their hope of succession by the restriction to the heirs of the princess Sophia.

* Rot. Parl. p. 423.

In this revolution of 1399, there was as remarkable an attention shewn to the formalities of the constitution, allowance made for the men and the times, as in that of 1688. The parliament was not opened by commission; no one took the office of president; the commons did not adjourn to their own chamber; they chose no speaker; the name of parliament was not taken, but that only of estates of the realm. But as it would have been a violation of constitutional principles to assume a parliamentary character without the king's commission, though summoned by his writ, so it was still more essential to limit their exercise of power to the necessity of circumstances. Upon the cession of the king, as upon his death, the parliament was no more; its existence, as the council of the sovereign, being dependent upon his will. The actual convention, summoned by the writs of Richard, could not legally become the parliament of Henry; and the validity of a statute declaring it to be such would probably have been questionable in that age, when the power of statutes to alter the original principles of the common law was by no means so thoroughly recognized as at the Restoration and Revolution. Yet Henry was too well pleased with his friends to part with them so readily; and he had much to effect before the fervour of their spirits should abate. Hence an expedient was devised, of issuing writs for a new parliament, returnable in six days. These neither were, nor could be complied with; but the same members as had deposed Richard sat in the new

parliament, which was regularly opened by Henry's commissioner as if they had been duly elected.* In this contrivance, more than in all the rest, we may trace the hand of lawyers.

Retrospect of the progress of the constitution under Richard II.

If we look back from the accession of Henry IV. to that of his predecessor, the constitutional authority of the house of commons will be perceived to have made surprizing progress during the course of twenty-two years. Of the three capital points in contest while Edward reigned, that money could not be levied, or laws enacted, without the commons' consent, and that the administration of government was subject to their inspection and controul, the first was absolutely decided in their favour, the second was at least perfectly admitted in principle, and the last was confirmed by frequent exercise. The commons had acquired two additional engines of immense efficiency; one, the right of directing the application of subsidies, and calling accountants before them; the other, that of impeaching the king's ministers for misconduct. All these vigorous shoots of liberty throve more and more under the three kings of the house of Lancaster, and drew such strength and nourishment from the generous heart of England, that in after-times and in a less prosperous season, though checked and obstructed in their growth, neither the blasts of arbitrary power could break

Its advances under the house of Lancaster.

* If proof could be required of any thing so self-evident, as that these assemblies consisted of exactly the same persons, it may be found in their writs of expenses, as published by Prynne, 4th Register, p. 450.

them off, nor the mildew of servile opinion cause them to wither. I shall trace the progress of parliament till the civil wars of York and Lancaster: 1. in maintaining the exclusive right of taxation; 2. in directing and checking the public expenditure; 3. in making supplies depend on the redress of grievances; 4. in securing the people against illegal ordinances and interpolations of the statutes; 5. in controuling the royal administration; 6. in punishing bad ministers; and lastly, in establishing their own immunities and privileges.

1. The pretence of levying money without consent of parliament expired with Edward III., who had asserted it, as we have seen, in the very last year of his reign. A great council of lords and prelates, summoned in the second year of his successor, declared that they could advise no remedy for the king's necessities, without laying taxes on the people, which could only be granted in parliament.* Nor was Richard ever accused of illegal tallages, the frequent theme of remonstrance under Edward, unless we may conjecture that this charge is implied in an act (11 R. II. c. 9.) which annuls all impositions on wool and leather, without consent of parliament, *if any there be.*† Doubtless his innocence in this respect was the effect of weakness; and if the revolution of 1399 had not put an end to his newly acquired despotism, this,

* 2 R. II. p. 56.

† It is positively laid down by the assertors of civil liberty in the great case of impositions (Howell's State Trials, vol. ii. p. 443, 507.) that no precedents for arbitrary taxation of exports or imports occur from the accession of Richard II. to the reign of Mary.

like every other right of his people, would have been swept away. A less palpable means of evading the consent of the commons was by the extortion of loans, and harrassing those who refused to pay, by summonses before the council. These loans, the frequent resource of arbitrary sovereigns in later times, are first complained of in an early parliament of Richard II.; and a petition is granted that no man shall be compelled to lend the king money.* But how little this was regarded, we may infer from a writ directed in 1386, to some persons in Boston, injoining them to assess every person who had goods and chattels to the amount of twenty pounds, in his proportion of two hundred pounds, which the town had promised to lend the king; and giving an assurance that this shall be deducted from the next subsidy to be granted by parliament. Among other extraordinary parts of this letter is a menace of forfeiting life, limbs and property, held out against such as should not obey these commissioners.† After his triumph over the popular party towards the end of his reign, he obtained large sums in this way.

Under the Lancastrian kings, there is much less appearance of raising money in an unparliamentary course. Henry IV. obtained an aid from a great council in the year 1400; but they did not pretend to charge any besides themselves; though

* 2 R. II. p. 62. This did not find its way to the statute book.

† Rymer, t. vii. p. 544.

it seems that some towns afterwards gave the king a contribution.* A few years afterwards, he directs the sheriffs to call on the richest men in their counties to advançe the money voted by parliament. This, if any compulsion was threatened, is an instance of over-strained prerogative, though consonant to the practice of the late reign.† There is, however, an instance of very arbitrary conduct with respect to a grant of money in the minority of Henry VI. A subsidy had been granted by parliament upon goods imported, under certain restrictions in favour of the merchants, with a provision, that if these conditions be not observed on the king's part, then the grant should be void and of no effect.‡ But an entry is made on the roll of the next parliament, that "whereas some disputes have arisen about the grant of the last subsidy; it is declared by the duke of Bedford, and other lords in parliament with advice of the judges and others learned in the law, that the said subsidy was at all events to be collected and levied for the king's use; notwithstanding any conditions in the grant of the said subsidy contained."§ The commons, however, in making the grant of a fresh subsidy, in this parliament, renewed their former conditions, with the addition of another, that "it ne no part thereof be beset

* Carte, vol. ii. p. 640. Sir M. Hale observes that he finds no complaints of illegal impositions under the kings of the house of Lancaster. Hargrave's Tracts, vol. i. p. 184.

† Rymer, t. viii. p. 412. 488.

‡ Rot. Par. vol. iv. p. 210.

§ Id. p. 301.

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ne dispended to no other use, but only in and for the defense of the said roialme."*

Appropriation of supplies.

2. The right of granting supplies would have been very incomplete, had it not been accompanied with that of directing their application. This principle of appropriating public monies began, as we have seen, in the minority of Richard; and was among the best fruits of that period. It was steadily maintained under the new dynasty. The parliament of 6 H. IV. granted two fifteenths and two tenths, with a tax on skins and wool, on condition that it should be expended in the defence of the kingdom, and not otherwise, as Thomas Lord Furnival, and Sir John Pelham, ordained treasurers of war for this parliament, to receive the said subsidies, shall account and answer to the commons at the next parliament. These treasurers were sworn in parliament to execute their trust.† A similar precaution was adopted in the next session.‡

Attempt to make supply depend on redress of grievances.

3. The commons made a bold attempt in the second year of Henry IV. to give the strongest security to their claims of redress, by inverting the usual course of parliamentary proceedings. It was usual to answer their petitions on the last day of the session, which put an end to all further discussion upon them, and prevented their making the redress of grievances a necessary condition of supply. They now requested, that an answer might be given before they made their grant of

* Rot. Parl. vol. iv. p. 302.
† vol. iii. p. 546.
‡ p. 568.

subsidy. This was one of the articles which Richard II.'s judges had declared it high treason to attempt. Henry was not inclined to make a concession which would virtually have removed the chief impediment to the ascendancy of parliament. He first said, that he would consult with the lords, and answer according to their advice. On the last day of the session, the commons were informed that "it had never been known in the time of his ancestors, that they should have their petitions answered before they had done all their business in parliament, whether of granting money, or any other concern; wherefore the king will not alter the good customs and usages of ancient times."*

Notwithstanding the just views these parliaments appear generally to have entertained of their power over the public purse, that of the third of Henry V. followed a precedent from the worst times of Richard II., by granting the king a subsidy on wool and leather during his life.† This, an historian tells us, Henry IV. had vainly laboured to obtain;‡ but the taking of Harfleur intoxicated the English with new dreams of conquest in France, which their good sense and constitutional jealousy were not firm enough to resist. The continued expenses of the war, however, prevented this grant from becoming so dangerous as it might have been in a season of tranquillity.

* Rot. Parl. vol. iii. p. 458.
† Id. vol. iv. p. 63.
‡ Walsingham, p. 379.

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Henry V., like his father, convoked parliament almost in every year of his reign.

Legislative rights of the commons established.

4. It had long been out of all question, that the legislature consisted of the king, lords and commons; or, in stricter language, that the king could not make or repeal statutes without the consent of parliament. But this fundamental maxim was still frequently defeated by various acts of evasion or violence; which, though protested against as illegal, it was a difficult task to prevent. The king sometimes exerted a power of suspending the observance of statutes; as in the ninth of Richard II., when a petition that all statutes might be confirmed is granted with an exception as to one passed in the last parliament, forbidding the judges to take fees, or give counsel in cases where the king was a party; which, "because it was too severe, and needs declaration, the king would have of no effect till it should be declared in parliament."* The apprehension of this dispensing prerogative and sense of its illegality are manifested by the wary terms wherein the commons, in one of Richard's parliaments, "assent that the king make such sufferance respecting the statute of provisors, as shall seem reasonable to him, so that the said statute be not repealed; and moreover that the commons may disagree thereto at the next parliament, and resort to the statute;" with a protestation that this assent,

* p. 210. Ruffhead observes in the margin upon this statute 8 R. II. c. 3., that it is repealed, but does not take notice what sort of repeal it had.

which is a novelty, and never done before, shall not be drawn into precedent; praying the king that this protestation may be entered on the roll of parliament.* A petition in one of Henry IV.'s parliaments, to limit the number of attornies, and forbid filazers and prothonotaries from practising, having been answered favourably as to the first point, we find a marginal entry in the roll, that the prince and council had respited the execution of this act.†

Dispensing power of the crown.

The dispensing power, as exercised in favour of individuals, is quite of a different character from this general suspension of statutes, but indirectly weakens the sovereignty of the legislature. This power was exerted, and even recognized, throughout all the reigns of the Plantagenets. In the first of Henry V. the commons pray, that the statute for driving aliens out of the kingdom be executed. The king assents, saving his prerogative, and his right of dispensing with it when he pleased. To which the commons replied, that their intention was never otherwise, nor, by God's help, ever should be. At the same time one Rees ap Thomas petitions the king to modify or dispense with the statute prohibiting Welchmen from purchasing lands in England, or the English towns in Wales; which the king grants. In the same parliament, the commons pray, that no grant or protection be made to any one in contravention

* 15 R. II. p. 285. See too 16 R. II. p. 301. where the same power is renewed in H. IV.'s parliaments.

† 13 H. IV. p. 643.

of the statute of provisors, saving the king's prerogative. He merely answers, "Let the statutes be observed:" evading any allusion to his dispensing power.*

It has been observed under the reign of Edward III., that the practice of leaving statutes to be drawn up by the judges, from the petition and answer jointly, after a dissolution of parliament, presented an opportunity of falsifying the intention of the legislature, whereof advantage was often taken. Some very remarkable instances of this fraud occurred in the succeeding reigns.

An ordinance was put upon the roll of parliament, in the fifth of Richard II., empowering sheriffs of counties to arrest preachers of heresy, and their abettors, and detain them in prison till they should justify themselves before the church. This was introduced into the statutes of the year; but the assent of lords and commons is not expressed. In the next parliament, the commons, reciting this ordinance, declare that it was never assented to or granted by them, but what had been proposed in this matter was without their concurrence, (that is, as I conceive, had been rejected by them,) and pray that this statute be annulled, for it was never their intent to bind themselves or their descendants to the bishops more than their ancestors had been bound in times past. The king returned an answer, agreeing to this petition. Nevertheless the pretended statute

* Rot. Parl. v. 4 H. V. p. 6. 9.

was untouched, and remains still among our laws;* unrepealed, except by desuetude, and by inference from the acts of much later times.

This commendable reluctance of the commons to let the clergy forge chains for them produced, as there is much appearance, a similar violation of their legislative rights in the next reign. The statute against heresy in the second of Henry IV. is not grounded upon any petition of the commons, but only upon one of the clergy. It is said to be enacted by consent of the lords, but no notice is taken of the lower house in the parliament roll, though the statute reciting the petition asserts the commons to have joined in it.† The petition and the statute are both in Latin, which is unusual in the laws of this time. In a subsequent petition of the commons, this act is styled "the statute made in the second year of your majesty's reign at the request of the prelates and clergy of your kingdom;" which affords a presumption, that it had no regular assent of parliament.‡ And the spirit of the commons during this whole reign being remarkably hostile to the

* 5 R. II. stat. 2. c. 5.; Rot. Parl. 6 R. II. p. 141. Some other instances of the commons attempting to prevent these unfair practices are adduced by Ruffhead, in his preface to the statutes, and in Prynne's preface to Cotton's Abridgement of the Records. The act 13 R. II. stat. 1. c. 15., that the king's castles and gaols which had been separated from the body of the adjoining counties should be re-united to them, is not founded upon any petition that appears on the roll; and probably, by making search, other instances equally flagrant might be discovered.

† There had been, however, a petition of the commons on the same subject, expressed in very general terms, on which this terrible superstructure might artfully be raised. p. 474.

‡ p. 626.

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church, it would have been hardly possible to obtain their consent to so penal a law against heresy. Several of their petitions seem designed indirectly to weaken its efficacy.*

These infringements of their most essential right were resisted by the commons in various ways, according to the measure of their power. In the fifth of Richard II., they request the lords to let them see a certain ordinance before it is ingrossed.† At another time they procured some of their own members, as well as peers, to be present at ingrossing the roll. At length they spoke out unequivocally in a memorable petition, which, besides its intrinsic importance, is deserving of notice, as the earliest instance in which the House of Commons adopted the English language. I shall present its venerable orthography without change.

"Oure soverain lord, youre humble and trewe liegys that ben come for the comune of youre lond bysechyn onto youre rizt riztwesnesse, That so as hit hath ever be thair libte and fredom, that thar sholde no statut no lawe be made offlasse than they yaf therto their assent: consideringe that the comune of youre lond, the whiche that is, and ever

* We find a remarkable petition in 8 H. IV., professedly aimed against the Lollards, but intended, as I strongly suspect, in their favour. It condemns persons preaching against the catholic faith or sacraments to imprisonment till the next parliament, where they were to abide such judgement as should be rendered *by the king and peers of the realm.* This seems to supersede the burning statute of 2 H. IV., and the spiritual cognizance of heresy. Rot. Parl. p. 583. See too p. 626. The petition was expressly granted; but the clergy, I suppose, prevented its appearing on the statute roll.

† Rot. Parl. vol. iii. p. 102.

hath be, a membre of youre parlemente, ben as well assenters as peticioners, that fro this tyme foreward, by compleynte of the comune of any myschief axkynge remedie by mouthe of their speker for the comune, other ellys by petition writen, that ther never be no lawe made theruppon, and engrosed as statut and lawe, nother by addicions, nother by diminucions, by no manner of terme ne termes, the whiche that sholde chaunge the sentence, and the entente axked by the speker mouthe, or the petitions beforesaid yeven up yn writyng by the manere forsaid, withoute assent of the forsaid comune. Consideringe oure soverain lord, that it is not in no wyse the entente of youre comunes, zif yet be so that they axke you by spekyng, or by writyng, two thynges or three, or as manye as theym lust: But that ever it stande in the fredom of youre hie regalie, to graunte whiche of thoo that you luste, and to werune the remanent."

"The kyng of his grace especial graunteth that fro hensforth nothyng be enacted to the peticions of his comune, that be contrarie of hir askyng, wharby they shuld be bounde withoute their assent. Savyng alwey to our liege lord his real prerogatif, to graunte and denye what him lust of their petitions and askynges aforesaide."*

* Rot. Parl. v. iv. p. 22. It is curious that the authors of the Parliamentary History say that the roll of this parliament is lost, and consequently suppress altogether this important petition. Instead of which they give, as their fashion is, impertinent speeches out of Holingshed, which are certainly not genuine, and would be of no value if they were so.

Notwithstanding the fullness of this assent to so important a petition, we find no vestige of either among the statutes; and the whole transaction is unnoticed by those historians, who have not looked into our original records. If the compilers of the statute-roll were able to keep out of it the very provision that was intended to check their fraudulent machinations, it was in vain to hope for redress without altering the established practice in this respect; and indeed where there was no design to falsify the roll, it was impossible to draw up statutes which should be in truth the acts of the whole legislature, so long as the king continued to grant petitions in part, and to engraft new matter upon them. Such was still the case, till the commons hit upon an effectual expedient for screening themselves against these encroachments, which has lasted without alteration to the present day. This was the introduction of complete statutes, under the name of bills, instead of the old petitions; and these containing the royal assent, and the whole form of a law, it became, though not quite immediately,* a constant principle, that the king must admit or reject them without qualification. This alteration, which wrought an extraordinary effect on the character

* Henry VI. and Edward IV., in some cases passed bills with sundry provisos annexed by themselves. Thus the act for resumption of grants, 4 E. IV. was encumbered with 289 clauses in favour of so many persons whom the king meant to exempt from its operation; and the same was done in other acts of the same description. Rot. Parl. vol. v. p. 517.

of our constitution, was gradually introduced in Henry VI.'s reign.*

From the first years of Henry V., though not, I think, earlier, the commons began to concern themselves with the petitions of individuals to the lords or council. The nature of the jurisdiction exercised by the latter will be treated more fully hereafter; it is only necessary to mention in this place, that many of the requests preferred to them were such as could not be granted without transcending the boundaries of law. A just inquietude as to the encroachments of the king's council had long been manifested by the commons; and finding remonstrances ineffectual, they took measures for preventing such usurpations of legislative power, by introducing their own consent to private petitions. These were now presented by the hands of the commons, and in very many instances passed in the form of statutes,

* The variations of each statute, as now printed, from the parliamentary roll, whether in form or substance, are noticed in Cotton's Abridgement. It may be worth while to consult the preface to Ruffhead's edition of the Statutes, where this subject is treated at some length.

Perhaps the triple division of our legislature may be dated from this innovation. For as it is impossible to deny that, while the king promulgated a statute founded upon a mere petition, he was himself the real legislator, so I think it is equally fair to assert, notwithstanding the formal preamble of our statutes, that laws brought into either house of parliament in a perfect shape, and receiving first the assent of lords and commons, and finally that of the king, who has no power to modify them, must be deemed to proceed, and derive their efficacy, from the joint concurrence of all the three. It is said indeed at a much earlier time, that le ley de la terre est fait en parlement par le roi, et les seigneurs espirituels et temporels, et tout la communauté du royaume. Rot. Parl. vol. iii. p. 293. But this I must allow was in the violent session of 11 Ric. II., the constitutional authority of which is not to be highly prized.

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with the express assent of all parts of the legislature. Such was the origin of private bills, which occupy the greater part of the rolls in Henry V. and VI.'s parliaments. The commons once made an ineffectual endeavour to have their consent to all petitions presented to the council in parliament rendered necessary by law; if I rightly apprehend the meaning of the roll in this place, which seems obscure or corrupt.*

Interference of parliament with the royal expenditure.

5. If the strength of the commons had lain merely in the weakness of the crown, it might be inferred, that such harrassing interference with the administration of affairs as the youthful and frivolous Richard was compelled to endure would have been sternly repelled by his experienced successor. But, on the contrary, the spirit of Richard might have rejoiced to see that his mortal enemy suffered as hard usage at the hands of parliament as himself. After a few years, the government of Henry became extremely unpopular. Perhaps his dissension with the great family of Percy, which had placed him on the throne, and was regarded with partiality by the people,† chiefly contributed to this alienation of their attachment. The commons requested, in the fifth of his reign, that certain persons might be removed from the court; the lords concurred in displacing four of these, one being the king's confessor. Henry came down to parliament and excused these four

* 8 H. V. vol. iv. p. 127.

† The house of commons thanked the king for pardoning Northumberland, whom, as it proved, he had just cause to suspect. 5 H. IV. p. 525.

persons, as knowing no special cause why they should be removed; yet, well understanding, that what the lords and commons should ordain would be for his and his kingdom's interest, and therefore anxious to conform himself to their wishes, consented to the said ordinance, and charged the persons in question to leave his palace; adding that he would do as much by any other about his person, whom he should find to have incurred the ill affection of his people.* It was in the same session that the archbishop of Canterbury was commanded to declare before the lords the king's intention respecting his administration; allowing that some things had been done amiss in his court and household; and therefore, "wishing to conform to the will of God and laws of the land, protested that he would let in future no letters of signet or privy seal go in disturbance of law, beseeched the lords to put his household in order, so that every one might be paid, and declared that the money granted by the commons for the war should be received by treasurers appointed in parliament, and disbursed by them for no other purpose, unless in case of rebellion. At the request of the commons, he named the members of his privy council; and did the same, with some variation of persons, two years afterwards. These, though not nominated with the express consent, seem to have had the approbation of the commons; for a subsidy is granted, in 7 H. IV.,

* 5 H. IV. p. 525.

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among other causes, for the great trust that the commons have in the lords lately chosen, and ordained to be of the king's continual council, that there shall be better management than heretofore."*

In the sixth year of Henry, the parliament, which Sir E. Coke derides as unlearned, because lawyers were excluded from it, proceeded to a resumption of grants, and a prohibition of alienating the ancient inheritance of the crown without consent of parliament; in order to ease the commons of taxes, and that the king might live on his own.† This was a favourite, though rather chimerical project. In a later parliament, it was requested that the king would take his council's advice how to keep within his own revenue. He answered, that he would willingly comply, as soon as it should be in his power.‡

But no parliament came near, in the number and boldness of its demands, to that held in the eighth year of Henry IV. The commons presented thirty-one articles, none of which the king ventured to refuse, though pressing very severely upon his prerogative. He was to name sixteen counsellors, by whose advice he was solely to be guided, none of them to be dismissed without conviction of misdemeanour. The chancellor and privy seal to pass no grants or other matter, contrary to law. Any persons about the court stir-

* Rot. Parl. v. iii. p. 529. 568. 573.

† p. 547.

‡ 13. H. IV. p. 624.

ring up the king or queen's minds against their subjects, and duly convicted thereof, to lose their offices, and be fined. The king's ordinary revenue was wholly appropriated to his household and the payment of his debts; no grant of wardship or other profit to be made thereout, nor any forfeiture to be pardoned. The king "considering the wise government of other christian princes, and conforming himself thereto," was to assign two days in the week for petitions, "it being an honourable and necessary thing, that his lieges who desired to petition him should be heard." No judicial officer, nor any in the revenue or household to enjoy his place for life or term of years. No petition to be presented to the king by any of his household, at times when the council were not sitting. The council to determine nothing cognizable at common law, unless for a reasonable cause and with consent of the judges. The statutes regulating purveyance were affirmed; abuses of various kinds in the council and in courts of justice enumerated and forbidden; elections of knights for counties put under regulation. The council and officers of state were sworn to observe the common law, and all statutes, those especially just enacted.*

It must strike every reader, that these provisions were of themselves a noble fabric of constitutional liberty, and hardly perhaps inferior to the

* Rot. Parl. 8 H. IV. p. 585.

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petition of right under Charles I. We cannot account for the submission of Henry to conditions far more derogatory than ever were imposed on Richard, because the secret politics of his reign are very imperfectly understood. Towards its close he manifested more vigour. The speaker, Sir Thomas Chaucer, having made the usual petition for liberty of speech, the king answered that he might speak as others had done in the time of his (Henry's) ancestors, and his own, but not otherwise; for he would by no means have any innovation, but be as much at his liberty as any of his ancestors had ever been. Some time after he sent a message to the commons, complaining of a law passed at the last parliament, infringing his liberty and prerogative, which he requested their consent to repeal. To this the commons agreed, and received the king's thanks, who declared at the same time that he would keep as much freedom and prerogative as any of his ancestors. It does not appear what was the particular subject of complaint; but there had been much of the same remonstrating spirit in the last parliament, that was manifested on preceding occasions. The commons, however, for reasons we cannot explain, were rather dismayed. Before their dissolution, they petition the king, that, whereas he was reported to be offended at some of his subjects in this and in the preceding parliament, he would openly declare, that he held them all for loyal subjects. Henry granted this, "of

his special grace;" and thus concluded his reign more triumphantly with respect to his domestic battles than he had gone through it.*

Power deemed to be ill-gotten is naturally precarious; and the instance of Henry IV. has been well quoted to prove that public liberty flourishes with a bad title in the sovereign. None of our kings seem to have been less beloved; and indeed he had little claim to affection. But what men denied to the reigning king, they poured in full measure upon the heir of his throne. The virtues of the Prince of Wales are almost invidiously eulogized by those parliaments who treat harshly his father;† and these records afford a strong presumption, that some early petulance or riot has been much exaggerated by the vulgar minds of our chroniclers. One can scarcely understand at least, that a prince, who was three years engaged in quelling the dangerous insurrection of Glendour, and who in the latter time of his father's reign presided at the council, was so lost in a cloud of low debauchery as common fame represents.‡ Loved he certainly was throughout his life, as so intrepid, affable, and generous a temper well deserved; and this sentiment was heightened to admiration by successes still more rapid and dazzling than those of Edward III. During his reign, there scarcely appears any vestige of dis-

Henry V. his popularity.

* 13 H. IV. p. 648. 658.

† Rot. Parl. vol. iii. pp. 549. 568. 574. 611.

‡ This passage was written before I was aware that the same opinion had been elaborately maintained by Mr. Luders, in one of his valuable essays upon points of constitutional history.

satisfaction in parliament; a circumstance very honourable, whether we ascribe it to the justice of his administration, or to the affection of his people. Perhaps two exceptions, though they are rather one in spirit, might be made: the first, a petition to the duke of Glocester, then holding parliament as guardian of England, that he would move the king and queen to return, as speedily as might please them, in relief and comfort of the commons;* the second, a request that their petitions might not be sent to the king beyond sea, but altogether determined "within this kingdom of England, during this parliament;" and that this ordinance might be of force in all future parliaments to be held in England.† This prayer, to which the guardian declined to accede, evidently sprang from the apprehensions excited in their minds by the treaty of Troyes, that England might become a province of the French crown; which led them to obtain a renewal of the statute of Edward III., declaring the independence of this kingdom.‡

Parliament consulted on all public affairs.

It has been seen already, that even Edward III. consulted his parliament upon the expediency of negociations for peace; though at that time the commons had not acquired boldness enough to tender their advice. In Richard II.'s reign they answered to a similar proposition with a little more confidence, that the dangers each way were so considerable they dared not decide, though an

* 8 H. V. vol. iv. p. 125.
† p. 128.
‡ p. 130.

honourable peace would be the greatest comfort they could have; and concluded by hoping that the king would not engage to do homage for Calais or the conquered country.* The parliament of the tenth of his reign was expressly summoned in order to advise concerning the king's intended expedition beyond sea; a great council, which had previously been assembled at Oxford, having declared their incompetence to consent to this measure without the advice of parliament.† Yet a few years afterwards, on a similar reference, the commons rather declined to give any opinion.‡ They confirmed the league of Henry V. with the Emperor Sigismund.§ And the treaty of Troyes, which was so fundamentally to change the situation of Henry and his successors, obtained, as it evidently required, the sanction of both houses of parliament.‖ These precedents conspiring with the weakness of the executive government, in the minority of Henry VI., to fling an increase of influence into the scale of the commons, they made their concurrence necessary to all important business, both of a foreign and domestic nature. Thus commissioners were appointed to treat of the deliverance of the king of Scots, the duchesses of Bedford and Glocester were made denizens, and mediators were appointed to reconcile the dukes of Glocester and Burgundy, by authority of the three estates assembled in parliament.¶ Leave

* 7 R. II. vol. iii. p. 170.
† p. 215.
‡ 17 R. II. p. 315.
§ 4 H. V. vol. iv. p. 98.
‖ vol. iv. p. 135.
¶ Rot. Parl. vol. iv. p. 211, 242. 277.

was given to the dukes of Bedford and Glocester, and others in the king's behalf, to treat of peace with France, by both houses of parliament, in pursuance of an article in the treaty of Troyes, that no treaty should be set on foot with the dauphin without consent of the three estates of both realms.* This article was afterwards repealed.†

Some complaints are made by the commons, even during the first years of Henry's minority, that the king's subjects underwent arbitrary imprisonment, and were vexed by summonses before the council, and by the newly invented writ of subpœna out of chancery.‡ But these are not so common as formerly; and so far as the rolls lead us to any inference, there was less injustice committed by the government under Henry VI. and his father, than at any former period. Wastefulness indeed might justly be imputed to the regency, who had scandalously lavished the king's revenue.§ This ultimately led to an act for resuming all grants since his accession, founded upon a public declaration of the great officers of the crown, that his debts amounted to 372,000*l.* and the annual expense of the household to 24,000*l.*,

* p. 371.

† 23 H. VI. vol. v. p. 102. There is rather a curious instance in 3 H. VI. of the jealousy with which the commons regarded any proceedings in parliament, where they were not concerned. A controversy arose between the earls Marshal and of Warwick respecting their precedence; founded upon the royal blood of the first, and long possession of the second. In this the commons could not affect to interfere judicially; but they found a singular way of meddling, by petitioning the king to confer the dukedom of Norfolk on the earl marshal. vol. iv. p. 273.

‡ Rot. Parl. 1 H. VI. p. 189. 3 H. VI. p. 292. 8 H. VI. p. 343.

§ Id. vol. v. 18 H. VI. p. 17.

while the ordinary revenue was not more than 5,000*l.**

Impeachments of ministers.

6. But before this time the sky had begun to darken, and discontent with the actual administration pervaded every rank. The causes of this are familiar; the unpopularity of the king's marriage with Margaret of Anjou, and her impolitic violence in the conduct of affairs, particularly the imputed murder of the people's favourite, the duke of Glocester. This provoked an attack upon her own creature the duke of Suffolk. Impeachment had lain still, like a sword in the scabbard, since the accession of Henry IV.; when the commons, though not preferring formal articles of accusation, had petitioned the king that Justice Rickhill, who had been employed to take the duke of Glocester's confession at Calais, and the lords appellants of Richard II.'s last parliament, should be put on their defence before the lords.† In Suffolk's case, the commons seem to have proceeded by bill of attainder, or at least to have designed the judgement against that minister to be the act of the whole legislature. For they delivered a bill containing articles against him to the lords, with a request that they would pray the king's majesty to enact that bill in parliament, and that the said duke might be proceeded against upon the said articles in parliament according to the law and custom of England. These

* Rot. Parl. vol. v. 28 H. VI. p. 185.

† Id. vol. iii. p. 430. 449.

articles contained charges of high treason; chiefly relating to his conduct in France, which, whether treasonable or not, seems to have been grossly against the honour and advantage of the crown. At a later day, the commons presented many other articles of misdemeanour. To the former he made a defence, in presence of the king as well as the lords both spiritual and temporal; and indeed the articles of impeachment were directly addressed to the king, which gave him a reasonable pretext to interfere in the judgement. But, from apprehension, as it is said, that Suffolk could not escape conviction upon at least some part of these charges, Henry anticipated with no slight irregularity the course of legal trial; and summoning the peers into a private chamber, informed the duke of Suffolk, by mouth of his chancellor, that, inasmuch as he had not put himself upon his peerage, but submitted wholly to the royal pleasure, the king, acquitting him of the first articles containing matter of treason, by his own advice, and not that of the lords, nor by way of judgement, not being in a place where judgement could be delivered, banished him for five years from his dominions. The lords then present besought the king to let their protest appear on record, that neither they nor their posterity might lose their rights of peerage by this precedent. It was justly considered as an arbitrary stretch of prerogative, in order to defeat the privileges of parliament, and screen a favourite minister from punishment. But the course of proceeding by

bill of attainder, instead of regular impeachment, was not judiciously chosen by the commons.*

Privilege of parliament.

7. Privilege of parliament, an extensive and singular branch of our constitutional law, begins to attract attention under the Lancastrian princes. It is true indeed, that we can trace long before by records, and may infer with probability as to times whose records have not survived, one considerable immunity, a freedom from arrest for persons transacting the king's business in his national council.† Several authorities may be found in Mr. Hatsell's precedents; of which one, in the 9th of Edward II., is conclusive.‡ But in those rude times, members of parliament were not always respected by the officers executing legal process, and still less by the violators of law. After several remonstrances, which the crown had evaded,§ the commons obtained the statute 11 H. VI. c. 11. for the punishment of such as assault any on their way to the parliament, giving double damages to the party.‖ They had more difficulty in establishing, notwithstanding the old precedents in their favour, an immunity from all criminal process, except in charges of treason, felony, and breach of the peace,

* 28 H. VI. vol. v. p. 176.

† If this were to rest upon antiquity of precedent, one might be produced, that would challenge all competition. In the laws of Ethelbert, the first christian king of Kent, at the end of the sixth century, we find this provision; if the king call his people to him, (i. e. in the wittenagemot,) and any one does an injury to one of them, let him pay a fine. Wilkins, Leges Anglo-Saxon. p. 2.

‡ Hatsell, vol. i. p. 12.

§ Rot. Parl. 5 H. IV. p. 541.

‖ The clergy had got a little precedence in this. An act passed 8 H. VI. c. 1. granting privilege from arrest for themselves and servants on their way to convocation.

which is their present measure of privilege. The truth was, that with a right pretty clearly recognized, as is admitted by the judges in Thorp's case, the house of commons had no regular compulsory process at their command. In the cases of Lark, servant of a member, in the 8th of Henry VI.,* and of Clerke, himself a burgess, in the 39th of the same king,† it was thought necessary to effect their release from a civil execution by special acts of parliament. The commons, in the former instance, endeavoured to make the law general, that no members nor their servants might be taken, except for treason, felony, and breach of peace; but the king put a negative upon this part of their petition.

The most celebrated, however, of these early cases of privilege is that of Thomas Thorp, speaker of the commons in 31 H. VI. This person, who was moreover a baron of the exchequer, had been imprisoned on an execution at suit of the duke of York. The commons sent some of their members to complain of a violation of privilege to the king and lords in parliament, and to demand Thorp's release. It was alledged by the duke of York's council, that the trespass done by Thorp was since the beginning of the parliament, and the judgement thereon given in time of vacation, and not during the sitting. The lords referred the question to the judges, who said, after deliberation, that "they ought not to answer to that question, for it hath not be used aforetyme, that the judges

* Rot. Parl. vol. iv. p. 357. † vol. v. p. 374.

should in any wise determine the privilege of this high court of parliament; for it is so high and so mighty in his nature, that it may make law, and that that is law it may make no law; and the determination and knowledge of that privilege belongeth to the lords of the parliament, and not to the justices." They went on, however, after observing that a general writ of supersedeas of all processes upon ground of privilege had not been known, to say, that, "if any person that is a member of this high court of parliament be arrested in such cases as be not for treason or felony, or surety of the peace, or for a condemnation had before the parliament, it is used that all such persons should be released of such arrests and make an attorney, so that they may have their freedom and liberty, freely to intend upon the parliament."

Notwithstanding this answer of the judges, it was concluded by the lords, that Thorp should remain in prison, without regarding the alledged privilege; and the commons were directed in the king's name to proceed "with all goodly haste and speed" to the election of a new speaker. It is curious to observe, that the commons, forgetting their grievances, or content to drop them, made such haste and speed according to this command, that they presented a new speaker for approbation the next day.*

This case, as has been strongly said, was be-

* Rot. Parl. vol. v. p. 239. Hatsell's Precedents, p. 29.

gotten by the iniquity of the times. The state was verging fast towards civil war; and Thorp, who afterwards distinguished himself for the Lancastrian cause, was an inveterate enemy of the duke of York. That prince seems to have been swayed a little from his usual temper, in procuring so unwarrantable a determination. In the reign of Edward IV., the commons claimed privilege against any civil suit during the time of their session; but they had recourse, as before, to a particular act of parliament to obtain a writ of supersedeas in favour of one Atwell, a member, who had been sued. The present law of privilege seems not to have been fully established, or at least effectually maintained, before the reign of Henry VIII.*

No privilege of the commons can be so fundamental as liberty of speech. This is claimed at the opening of every parliament by their speaker, and could never be infringed without shaking the ramparts of the constitution. Richard II.'s attack upon Haxey has been already mentioned as a flagrant evidence of his despotic intentions. No other case occurs until the 33d year of Henry VI., when Thomas Young, member for Bristol, complained to the commons, that, "for matters by him shewed in the house accustomed for the commons in the said parliaments, he was therefore taken, arrested, and rigorously in open wise led to the

* Upon this subject, the reader should have recourse to Hatsell's Precedents, vol. i. chap. i.

Tower of London, and there grievously in great duress long time imprisoned against the said freedom and liberty," with much more to the like effect. The commons transmitted this petition to the lords, and the king "willed, that the lords of his council do and provide for the said suppliant, as in their discretions shall be thought convenient and reasonable." This imprisonment of Young, however, had happened six years before, in consequence of a motion made by him, that the king then having no issue, the duke of York might be declared heir apparent of the crown. In the present session, when the duke was protector, he thought it well-timed to prefer his claim to remuneration.*

There is a remarkable precedent in the 9th of Henry IV., and perhaps the earliest authority for two eminent maxims of parliamentary law; that the commons possess an exclusive right of originating money-bills, and that the king ought not to take notice of matters pending in parliament. A quarrel broke out between the two houses upon this ground; and as we have not before seen the commons venture to clash openly with their superiors, the circumstance is for this additional reason worthy of attention. As it has been little noticed, I shall translate the whole record.

"Friday the second day of December, which

* Rot. Parl. vol. v. p. 337. W. Worcester, p. 475. Mr. Hatsell seems to have overlooked this case, for he mentions that of Strickland in 1571, as the earliest instance of the crown's interference with freedom of speech in parliament. vol. i. p. 85.

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was the last day of the parliament, the commons came before the king and the lords in parliament, and there by command of the king, a schedule of indemnity touching a certain altercation moved between the lords and commons was read; and on this it was commanded by our said lord the king, that the said schedule should be entered of record in the roll of parliament; of which schedule the tenor is as follows: be it remembered, that on Monday the 21st day of November, the king our sovereign lord being in the council-chamber in the abbey of Glocester,* the lords spiritual and temporal for this present parliament assembled being then in his presence, a debate took place among them about the state of the kingdom, and its defence to resist the malice of the enemies who on every side prepare to molest the said kingdom and its faithful subjects, and how no man can resist this malice, unless, for the safeguard and defence of his said kingdom, our sovereign lord the king has some notable aid and subsidy granted to him in his present parliament. And therefore it was demanded of the said lords by way of question, what aid would be sufficient and requisite in these circumstances? To which question it was answered by the said lords severally, that considering the necessity of the king on one side, and the poverty of his people on the other, no less aid could be sufficient, than one tenth and a half from cities and towns, and one fifteenth and a half from all

* This parliament sat at Glocester.

other lay persons; and besides, to grant a continuance of the subsidy on wool, woolfells and leather, and of three shillings on the ton (of wine), and twelve pence on the pound (of other merchandize), from Michaelmas next ensuing for two years thenceforth. Whereupon, by command of our said lord the king, a message was sent to the commons of this parliament, to cause a certain number of their body to come before our said lord the king and the lords, in order to hear and report to their companions what they should be commanded by our said lord the king. And upon this the said commons sent into the presence of our said lord the king and the said lords twelve of their companions; to whom, by command of our said lord the king, the said question was declared, with the answer by the said lords severally given to it. Which answer it was the pleasure of our said lord the king, that they should report to the rest of their fellows, to the end that they might take the shortest course to comply with the intention of the said lords. Which report being thus made to the said commons, they were greatly disturbed at it, saying and asserting it to be much to the prejudice and derogation of their liberties. And after that our said lord the king had heard this, not willing that any thing should be done at present, or in time to come, that might anywise turn against the liberty of the estate, for which they are come to parliament, nor against the liberties of the said lords, wills and grants, and declares, by the advice and consent of the said lords,

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as follows; to wit, that it shall be lawful for the lords to debate together in this present parliament, and in every other for time to come, in the king's absence, concerning the condition of the kingdom, and the remedies necessary for it. And in like manner it shall be lawful for the commons, on their part, to debate together concerning the said condition and remedies. Provided always, that neither the lords on their part, nor the commons on theirs, do make any report to our said lord the king of any grant granted by the commons, and agreed to by the lords, nor of the communications of the said grant, before that the said lords and commons are of one accord and agreement in this matter, and then in manner and form accustomed, that is to say, by the mouth of the speaker of the said commons for the time being, to the end that the said lords and commons may have what they desire (avoir puissent leur gree) of our said lord the king. Our said lord the king willing moreover, by the consent of the said lords, that the communication had in this present parliament as above be not drawn into precedent in time to come, nor be turned to the prejudice or derogation of the liberty of the estate, for which the said commons are now come, neither in this present parliament, nor in any other time to come. But wills, that himself, and all the other estates, should be as free as they were before. Also, the said last day of parliament, the said speaker prayed our said lord the king on the part of the said commons, that he would grant the said commons, that they should

depart in as great liberty as other commons had done before. To which the king answered, that this pleased him well, and that at all times it had been his desire."*

Every attentive reader will discover this remarkable passage to illustrate several points of constitutional law. For hence it may be perceived: first, that the king was used in those times to be present at debates of the lords, personally advising with them upon the public business; which also appears by many other passages on record; and this practice, I conceive, is not abolished by the king's present declaration, save as to grants of money, which ought to be of the freewill of parliament, and without that fear or influence, which the presence of so high a person might create: secondly, that it was already the established law of parliament, that the lords should consent to the commons' grant, and not the commons to the lords; since it is the inversion of this order whereof the commons complain, and it is said expressly that grants are made by the commons, and agreed by the lords: thirdly, that the lower house of parliament is not, in proper language, an estate of the realm, but rather the image and representative of the commons of England; who, being the third estate; with the nobility and clergy, make up and constitute the people of this kingdom and liege subjects of the crown.†

* Rot. Parl. v. iii. p. 611.

† A notion is entertained by many people, and not without the authority of some very respectable

At the next meeting of parliament, in allusion probably to this disagreement between the houses, the king told them, that the states of parliament names, that the king is one of the three estates of the realm, the lords spiritual and temporal forming together the second, as the commons in parliament do the third. This is contradicted by the general tenor of our ancient records and law-books; and indeed the analogy of other governments ought to have the greatest weight, even if more reason for doubt appeared upon the face of our own authorities. But the instances where the three estates are declared or implied to be the nobility, clergy and commons, or at least their representatives in parliament, are too numerous for insertion. This land standeth, says the Chancellor Stillington, in 7th Edward IV. by three states, and above that one principal, that is to wit, lords spiritual, lords temporal, and commons, and over that, state royal, as our sovereign lord the king. Rot. Parl. vol. v. p. 622. Thus too it is declared that the treaty of Staples in 1492 was to be confirmed per tres status regni Angliæ ritè et debitè convocatos, videlicet per prelatos et clerum, nobiles et communitates ejusdem regni. Rymer, t. xii. p. 508.

I will not, however, suppress one passage, and the only instance that has occurred in my reading, where the king does appear to have been reckoned among the three estates. The commons say, in the 2d of Henry IV., that the states of the realm may be compared to a trinity, that is, the king, the lords spiritual and temporal and the commons. Rot. Parl. vol. iii. p. 459. In this expression, however, the sense shews, that by estates of the realm, they meant members, or necessary parts of the parliament.

Whitelocke, on the Parliamentary Writ, vol. ii. p. 43. argues at length, that the three estates are king, lords and commons, which seems to have been a current doctrine among the popular lawyers of the seventeenth century. His reasoning is chiefly grounded on the baronial tenure of bishops, the validity of acts passed against their consent, and other arguments of the same kind; which might go to prove that there are only at present two estates, but can never turn the king into one.

The source of this error is an inattention to the primary sense of the word estate (status), which means an order or condition into which men are classed by the institutions of society. It is only in a secondary or rather an elliptical application, that it can be referred to their representatives in parliament or national councils. The lords temporal, indeed, of England are identical with the estate of the nobility; but the house of commons is not, strictly speaking, the estate of commonalty, to which its members belong, and from which they are deputed. So the whole body of the clergy are properly speaking one of the estates, and are described as such in the older authorities, 21 Ric. II. Rot. Parl. v iii. p. 348. though latterly the lords spiritual in parliament acquired, with less correctness, that appellation. Hody on Convocations, p. 426. The bishops, indeed, may be said, constructively, to represent the whole of the clergy

were come together for the common profit of the king and kingdom, and for unanimity's sake and general consent; and therefore he was sure the commons would not attempt nor say anything, but what should be fitting and conducive to unanimity; commanding them to meet together, and communicate for the public service.*

It was not only in money bills that the originating power was supposed to reside in the commons. The course of proceedings in parliament, as has been seen, from the commencement at least of Edward III.'s reign, was that the commons presented petitions, which the lords by themselves, or with the assistance of the council, having duly considered, the sanction of the king was notified or withheld. This was so much according to usage, that, on one occasion, when the commons requested the advice of the other house on a matter before them, it was answered, that the ancient custom and form of parliament had ever been for the commons to report their own opinion to the king and lords, and not the contrary; and the king would have the ancient and laudable usages of parliament maintained.† It is singular that in the terror of innovation, the lords did not discover how materially this usage of parliament took off from their own legislative influence. The rule, however, was not observed in succeeding times;

with whose grievances they are supposed to be best acquainted, and whose rights it is their peculiar duty to defend. And I do not find that the inferior clergy had any other representation in the cortes of Castile and Aragon, where the ecclesiastical order was always counted among the estates of the realm.

* p. 623.

† Rot. Parl. 5 R. II. p. 100.

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bills originated indiscriminately in either house; and indeed some acts of Henry V., which do not appear to be grounded on any petition, may be suspected, from the manner of their insertion in the rolls of parliament, to have been proposed on the king's part to the commons.* But there is one manifest instance in the 18th of Henry VI., where the king requested the commons to give their authority to such regulations† as his council might

* Stat. 2 H. V. c. 6, 7, 8, 9. 4 H. VI. c. 7.

† Rot. Parl. vol. v. p. 7. It appears by a case in the year-book of the thirty-third of Henry VI., that, where the lords made only some minor alterations in a bill sent up to them from the commons, even if it related to a grant of money, the custom was not to remand it for their assent to the amendment. Brooke's Abridgement: Parliament. 4. The passage is worth extracting, in order to illustrate the course of proceeding in parliament at that time. Case fuit que Sir J. P. fuit attaint de certeyn trespas par acte de parliament, dont les commons furent assentus, que sil ne vient eins per tiel jour que il forfeytera tiel summe, et les seigneurs done plus longe jour, et le bil nient rebaile al commons arrere; et per Kirby, clerk des roles del parliament, l'use del parliament est, que si bil vient primes a les commons, et ils passent ceo, il est use d'endorser ceo en tiel forme; Soit bayle as seigniors; et si les seigniors *ne le roy* ne alteront le bil, donques est use a liverer ceo al clerke del parliament destre enrol saunz endorser ceo..... Et si les seigniors volent alter un bil in ceo que poet estoyer ore le bil, ils poyent saunz remandre ceo al commons, come si les commons graunte poundage pur quatuor ans, et les grantent nisi par deux ans, ceo ne serra rebayle al commons; mes si les commons grauntent nisi pur deux ans, et les seigneurs pur quatre ans, la ceo serra reliver al commons, et en cest case les seigniors doyent faire un sedule de lour intent, ou d'endorser le bil en ceste forme, Les seigneurs ceo assentent pur durer par quatuor ans; et quant les commons ount le bil arrere, et ne volent assenter a ceo, ceo ne poet estre un acte, mes si les commons volent assenter, donques ils indorse leur respons sur le mergent de basse deins le bil en tiel forme, Les commons sont assentans al sedul des seigniors, a mesme cesty bil annexe, et donques sera bayle ad clerke del parliament, ut supra. Et si un bil soit primes liver al seigniors, et le bil passe eux, ils ne usont de fayre ascun endorsement, mess de mitter le bil as commons, et donques si le bil passe les commons, il est use destre issint endorce, Les commons sont assentants, et ceo prove que il ad passe les seigniors devant, et lour assent est a cest passer del seigniors; et ideo cest acte supra nest bon, pur

provide for redressing the abuse of purveyance; to which they assented.

If we are to chuse constitutional precedents from seasons of tranquillity rather than disturbance, which surely is the only means of preserving justice or consistency, but little intrinsic authority can be given to the following declaration of parliamentary law in the 11th of Richard II. "In this parliament (the roll says) all the lords as well spiritual and temporal there present, claimed as their liberty and privilege, that the great matters moved in this parliament, and to be moved in other parliaments for time to come, touching the peers of the land, should be treated, adjudged, and debated according to the course of parliament, and not by the civil law, nor the common law of the land, used in the other lower courts of the kingdom; which claim, liberty and privilege, the king graciously allowed and granted them in full parliament."* It should be remembered that this assertion of paramount privilege was made in very irregular times, when the king was at the mercy of the duke of Glocester and his associates, and that it had a view to the immediate object of justifying their violent proceedings against the opposite party, and taking away the restraint of the common law. It stands as a dangerous rock to be avoided, not a light-house to guide us

ceo que ne fuit rebaile as commons.

A singular assertion is made in the year-book 21 E. IV. p. 48. (Maynard's edit.) that a subsidy granted by the commons without assent of the peers is good enough. This cannot surely have been law at that time.

* Rot. Parl. vol. iii. p. 244.

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along the channel. The law of parliament as determined by regular custom is incorporated into our constitution; but not so as to warrant an indefinite, uncontroulable assumption of power in any case, least of all in judicial procedure, where the form and the essence of justice are inseparable from each other. And, in fact, this claim of the lords, whatever gloss Sir E. Coke may put upon it, was never intended to bear any relation to the privileges of the lower house. I should not perhaps have noticed this passage so strongly if it had not been made the basis of extravagant assertions as to the privileges of parliament;* the spirit of which exaggerations might not be ill adapted to the times wherein Sir E. Coke lived, though I think they produced at several later periods no slight mischief, some consequences of which we may still have to experience.

Contested elections how determined.

The want of all judicial authority, either to issue process or to examine witnesses, together with the usual shortness of sessions, deprived the house of commons of what is now considered one of its most fundamental privileges, the cognizance of disputed elections. Upon a false return by the sheriff, there was no remedy but through the king or his council. Six instances only, I believe, occur during the reigns of the Plantagenet family, wherein the misconduct or mistake of the sheriff is recorded to have called for a specific animadversion, though it was frequently the ground of gene-

* Coke's 4th Institute, p. 15.

ral complaint, and even of some statutes. The first is in the 12th of Edward II., when a petition was presented to the council against a false return for the county of Devon, the petitioner having been duly elected. It was referred to the court of exchequer to summon the sheriff before them.* The next occurs in the 36th of E. III., when a writ was directed to the sheriff of Lancashire, after the dissolution of parliament, to inquire at the county court into the validity of the election; and upon his neglect, a second writ issued to the justices of the peace to satisfy themselves about this in the best manner they could, and report the truth into chancery. This inquiry after the dissolution was on account of the wages for attendance, to which the knights unduly returned could have no pretence.† We find a third case in the 7th. of Richard II., when the king took notice that Thomas de Camoys, who was summoned by writ to the house of peers, had been elected knight for Surrey, and directed the sheriff to return another.‡ In the same year, the town of Shaftsbury petitioned the king, lords, and commons against a false return of the sheriff of Dorset, and prayed them to order remedy. Nothing further appears respecting this petition.§ This is the first instance of the commons being noticed in matters of election. But the next case is more material: in the 5th of Henry IV., the commons prayed the king

* Glanvil's Reports of Elections, edit. 1774. Introduction, p. 12.

† 4 Prynne, p. 261.

‡ Glanvil's Reports, ibid. from Prynne.

§ Id. ibid.

and lords in parliament, that because the writ of summons to parliament was not sufficiently returned by the sheriff of Rutland, this matter might be examined in parliament, and in case of default found therein, an exemplary punishment might be inflicted; whereupon the lords sent for the sheriff and Oneby, the knight returned, as well as Thorp who had been duly elected, and having examined into the facts of the case, directed the return to be amended, by the insertion of Thorp's name, and committed the sheriff to the fleet, till he should pay a fine at the king's pleasure.* The last passage that I can produce is from the roll of 18 H. VI., where "it is considered by the king, with the advice and assent of the lords spiritual and temporal," that whereas no knights have been returned for Cambridgeshire, the sheriff shall be directed, by another writ, to hold a court, and to proceed to an election, proclaiming that no person shall come armed, nor any tumultuous proceeding take place; something of which sort appears to have obstructed the execution of the first writ. It is to be noticed that the commons are not so much as named in this entry.† But several provisions were made by statute under the Lancastrian kings, when seats in parliament became much more an object of competition than before, to check the partiality of the sheriffs in making undue returns. One act (11 H. IV. c. 1.)

* Ibid. and Rot. Parl. v. iii. p. 580.

† Rot. Parl. vol. v. p. 7.

gives the justices of assize power to inquire into this matter, and inflicts a penalty of one hundred pounds on the sheriff. Another, (6 H. VI. c. 4.) mitigates the rigour of the former, so far as to permit the sheriff or the knights returned by him to traverse the inquests before the justices; that is, to be heard in their own defence, which, it seems, had not been permitted to them. Another (23 H. VI. c. 14.) gives an additional penalty upon false returns to the party aggrieved. These statutes conspire with many other testimonies to manifest the rising importance of the house of commons, and the eagerness with which gentlemen of landed estate (whatever might be the case in petty boroughs) sought for a share in the national representation.

In whom the right of voting for knights resided.

Whoever may have been the original voters for county representatives, the first statute that regulates their election, so far from limiting the privilege to tenants in capite, appears to place it upon a very large and democratical foundation. For, (as I rather conceive, though not without much hesitation,) not only all freeholders, but all persons whatever present at the county-court, were declared, or rendered, capable of voting for the knight of their shire. Such at least seems to be the inference from the expressions of 7 H. IV. c. 15. "all who are there present, as well suitors duly summoned for that cause, as others."* And

* 3 Prynne's Register, p. 187. This hypothesis, though embraced by Prynne, is, I confess, much opposed to general opinion; and a very respectable living writer treats such an interpretation of the sta-

this acquires some degree of confirmation from the later statute, 8 H. VI. c. 7. which, reciting that "elections of knights of shires have now of late been made by very great, outrageous and excessive number of people dwelling within the same counties, of the which most part was people of small substance, and of no value," confines the elective franchise to freeholders of lands or tenements to the value of forty shillings.

Elections of burgesses.

The representation of towns in parliament was founded upon two principles; of consent to public burthens, and of advice in public measures, especially such as related to trade and shipping. Upon both these accounts it was natural for the kings who first summoned them to parliament, little foreseeing that such half-emancipated burghers

tute 7 H. IV. as chimerical. The words cited in the text, "as others" mean only, according to him, suitors not duly summoned. Heywood on Elections, vol. i. p. 20. But, as I presume, the summons to freeholders was by general proclamation; so that it is not easy to perceive what difference there could be between summoned and unsummoned suitors. And if the words are supposed to glance at the private summonses to a few friends, by means of which the sheriffs were accustomed to procure a clandestine election, one can hardly imagine that such persons would be styled "duly summoned." It is not unlikely, however, that these large expressions were inadvertently used, and that they led to that inundation of voters without property, which rendered the subsequent act of Henry VI. necessary. That of Henry IV. had itself been occasioned by an opposite evil, the close election of knights by a few persons in the name of the county.

Yet the consequence of the statute of Henry IV. was not to let in too many voters, or to render elections tumultuous, in the largest of English counties, whatever it might be in others. Prynne has published some singular sheriff's indentures for the county of York, all during the interval between the acts of Henry IV. and Henry VI., which are sealed by a few persons calling themselves the attornies of some peers and ladies, who, as far as appears, had solely returned the knights of that shire. 3 Prynne, p. 152. What degree of weight these anomalous returns ought to possess, I leave to the reader.

would ever clip the loftiest plumes of their prerogative, to make these assemblies numerous, and summon members from every town of consideration in the kingdom. Thus the writ of 23 E. I. directs the sheriffs to cause deputies to be elected to a general council from every city, borough, and trading town. And although the last words are omitted in subsequent writs, yet their spirit was preserved; many towns having constantly returned members to parliament, by regular summonses from the sheriffs, which were no chartered boroughs, nor had apparently any other claim than their populousness or commerce. These are now called boroughs by prescription.*

Besides these respectable towns, there were some of a less eminent figure, which had writs directed to them, as ancient demesnes of the crown. During times of arbitrary taxation, the

* The majority of prescriptive boroughs have prescriptive corporations, which carry the legal, which is not always the moral, presumption of an original charter. But "many boroughs and towns in England have burgesses by prescription, that never were incorporate." Ch. J. Hobart in Dungannon Case, Hobart's Reports, p. 15. And Mr. Luders thinks, I know not how justly, that, in the age of Edward I., which is most to our immediate purpose, "there were not perhaps thirty corporations in the kingdom." Reports of Elections, vol. i. p. 98. But I must allow that, in the opinion of many sound lawyers, the representation of unchartered, or at least unincorporated boroughs was rather a *real* privilege, and founded upon tenure, than one arising out of their share in public contributions. Ch. J. Holt in Ashby v. White, 2 Ld. Raymond, 951. Heywood on Borough Elections, p. 11. This inquiry is very obscure; and perhaps the more so, because the learning directed towards it has more frequently been that of advocates, than of unbiassed antiquaries. If this be kept in view, the lover of constitutional history will find much information in several of the reported cases on controverted elections; particularly those of Tewksbury and Liskeard in Peckwell's Reports, vol. i.

crown had set tallages alike upon its chartered boroughs and upon its tenants in demesne. When parliamentary consent became indispensable, the free tenants in ancient demesne, or rather such of them as inhabited some particular vills, were called to parliament among the other representatives of the commons. They are usually specified distinctly from the other classes of representatives in grants of subsidies throughout the parliaments of the two first Edwards, till, about the beginning of the Third's reign, they were confounded with ordinary burgesses.* This is the foundation of that particular species of elective franchise incident to what we denominate burgage tenure; which, however, is not confined to the ancient demesne of the crown.†

The proper constituents therefore of the citizens and burgesses in parliament appear to have been— 1. All chartered boroughs, whether they derived their privileges from the crown, or from a mesne lord, as several in Cornwall did from Richard king of the Romans;‡ 2. All towns which were the ancient or the actual demesne of the crown; 3. All considerable places, though unincorporated, which could afford to defray the expenses of their representatives, and had a notable interest in the public welfare. But no parliament ever perfectly corresponded with this theory. The writ was addressed in general terms to the sheriff, requiring him to

Power of the sheriff to omit boroughs.

* Brady on Boroughs, p. 75. 80. and 163. Case of Tewksbury, in Peckwell's Reports, vol. i. p. 178.

† Littleton, s. 162. 163.

‡ Brady, p. 97.

cause two knights to be elected out of the body of the county, two citizens from every city, and two burgesses from every borough. It rested altogether upon him to determine, what towns should exercise this franchise; and it is really incredible, with all the carelessness and ignorance of those times, what frauds the sheriffs ventured to commit in executing this trust. Though parliaments met almost every year, and there could be no mistake in so notorious a fact, it was the continual practice of sheriffs to omit boroughs that had been in the recent habit of electing members, and to return upon the writ that there were no more within their county. Thus in the 12th of Edward III. the sheriff of Wiltshire, after returning two citizens for Salisbury, and burgesses for two boroughs, concludes with these words: "There are no other cities, or boroughs within my bailiwick." Yet in fact eight other towns had sent members to preceding parliaments. So in the 6th of Edward II., the sheriff of Bucks declared that he had no borough within his county except Wycomb; though Wendover, Agmondesham and Marlow had twice made returns since that king's accession.* And from this cause alone

* Brady on Boroughs, p. 110. 3 Prynne, p. 231. The latter even argues that this power of omitting ancient boroughs was legally vested in the sheriff before the 5th of Richard II. And, though the language of that act implies the contrary of this position, yet it is more than probable, that most of our parliamentary boroughs by prescription, especially such as were then unincorporated, are indebted for their privileges to the exercise of the sheriff's discretion; not founded on partiality, which would rather have led him to omit them, but on the broad principle that they were sufficiently opulent and important to send representatives to parliament.

it has happened, that many towns called boroughs, and having a charter and constitution as such, have never returned members to parliament; some of which are now among the most considerable in England, as Leeds, Birmingham, and Macclesfield.*

It has been suggested indeed by Brady,† that these returns may not appear so false and collusive, if we suppose the sheriff to mean only that there were no resident burgesses within these boroughs fit to be returned, or that the expense of their wages would be too heavy for the place to support. And, no doubt, the latter plea, whether implied or not in the return, was very frequently an inducement to the sheriffs to spare the smaller boroughs. The wages of knights were four shillings a day, levied on all freeholders, or at least on all holding by knight-service, within the county.‡ Those of

* Willis, Notitia Parliamentaria, vol. i. preface, p. 35.

† p. 117.

‡ It is a perplexing question, whether freeholders in socage were liable to contribute towards the wages of knights; and authorities might be produced on both sides. The more probable supposition is, that they were not exempted. See the various petitions relating to the payment of wages in Prynne's fourth Register. This is not unconnected with the question as to their right of suffrage. See p. 23 of this volume. Freeholders within franchises made repeated endeavours to exempt themselves from payment of wages. Thus in 9 H. IV. it was settled by parliament, that, to put an end to the disputes on this subject between the people of Cambridgeshire, and those of the isle of Ely, the latter should pay 200*l.* and be quit in future of all charges on that account. Rot. Parl. vol. iv. p. 383. By this means the inhabitants of that franchise seem to have purchased the right of suffrage, which they still enjoy, though not, I suppose, suitors to the county-court. In most other franchises, and in many cities erected into distinct counties, the same privilege of voting for knights of the shire is practically exercised; but whether this has not proceeded as much from the tendency of returning officers and of parliament to favour the right of election in doubtful

burgesses were half that sum;* but even this pittance was raised with reluctance and difficulty from miserable burghers, little solicitous about political franchises. Poverty, indeed, seems to have been accepted as a legal excuse. In the 6th of E. II. the sheriff of Northumberland returns to the writ of summons, that all his knights are not sufficient to protect the county; and in the 1st of E. III., that they were too much ravaged by their enemies to send any members to parliament.† The sheriffs of Lancashire, after several returns that they had no boroughs within their county, though Wigan, Liverpool, and Preston were such, alledged at length, that none ought to be called upon, on account of their poverty. This return was constantly made, from 36 E. III. to the reign of Henry VI.‡

cases, as from the merits of their pretensions, may be a question.

* The wages of knights and burgesses were first reduced to this certain sum by the writs De levandis expensis, 16 E. II. Prynne's fourth Register, p. 53. These were issued at the request of those who had served, after the dissolution of parliament, and included a certain number of days, according to the distance of the county whence they came, for going and returning. It appears by these that thirty-five or forty miles were reckoned a day's journey; which may correct the exaggerated notions of bad roads and tardy locomotion, that are sometimes entertained. See Prynne's fourth part, and Willis's Notitia Parliamentaria, passim.

The latest entries of writs for expenses in the close rolls are of 2 H. V.; but they may be proved to have issued much longer; and Prynne traces them to the end of Henry VIII.'s reign. p. 495. Without the formality of this writ, a very few instances of towns remunerating their burgesses for attendance in parliament are known to have occurred in later times. Andrew Marvel is commonly said to have been the last who received this honourable salary. A modern book asserts, that wages were paid in some Cornish boroughs as late as the eighteenth century. Lysons's Cornwall, preface, p. xxxii; but the passage quoted in proof of this is not precise enough to support so unlikely a fact.

† 3 Prynne, p. 165.

‡ 4 Prynne, p. 317.

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Reluctance of boroughs to send members.

The elective franchise was deemed by the boroughs no privilege or blessing, but rather, during the chief part of this period, an intolerable grievance. Where they could not persuade the sheriff to omit sending his writ to them, they set it at defiance by making no return. And this seldom failed to succeed, so that after one or two refusals to comply, which brought no punishment upon them, they were left in quiet enjoyment of their insignificance. The town of Torrington in Devonshire went farther, and obtained a charter of exemption from sending burgesses, grounded upon what the charter asserts to appear on the rolls of chancery, that it had never been represented before the 21st of E. III. This is absolutely false, and is a proof how little we can rely upon the veracity of records, Torrington having made not less than twenty-two returns before that time. It is curious, that in spite of this charter, the town sent members to the two ensuing parliaments, and then ceased for ever.* Richard II. gave the inhabitants of Colchester a dispensation from returning burgesses for five years, in consideration of the expenses they had incurred in fortifying the town.† But this immunity, from whatever reason, was not regarded, Colchester having continued to make returns as before.

The partiality of sheriffs in leaving out boroughs, which were accustomed in old time to come to the parliament, was repressed, as far as law could re-

* 4 Prynne, p. 320. † 3 Prynne, p. 241.

press it, by a statute of Richard II., which imposed a fine on them for such neglect, and upon any member of parliament who should absent himself from his duty.* But it is, I think, highly probable, that a great part of those who were elected from the boroughs did not trouble themselves with attendance in parliament. The sheriff even found it necessary to take sureties for their execution of so burthensome a duty, whose names it was usual, down to the end of the fifteenth century, to indorse upon the writ along with those of the elected.† This expedient is not likely to have been very successful; and the small number, comparatively speaking, of writs for expenses of members for boroughs, which have been published by Prynne, while those for the knights of shires are almost complete, leads to a strong presumption that their attendance was very defective. This statute of Richard II. produced no sensible effect.

Who the electors in boroughs were.

By what persons the election of burgesses was usually made is a question of great obscurity, which is still occasionally debated before committees of parliament. It appears to have been the common practice for a very few of the principal members of the corporation to make the election in the county-court, and their names, as actual electors, are generally returned upon the writ by the sheriff.‡ But we cannot surely be warranted by

* 5 R. II. stat. ii. c. 4.

† Luder's Reports, vol. i. p. 15. Sometimes an elected burgess absolutely refused to go to parliament, and drove his constituents to a fresh choice. 3 Prynne, p. 277.

‡ 3 Prynne, p. 252.

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this to infer, that they acted in any other capacity than as deputies of the whole body, and indeed it is frequently expressed that they chose such and such persons by the assent of the community;* by which word, in an ancient corporate borough, it seems natural to understand the freemen participating in its general franchises, rather than the ruling body, which, in many instances at present, and always perhaps in the earliest age of corporations, derived its authority by delegation from the rest. The consent, however, of the inferior freemen we may easily believe to have been merely nominal; and from being nominal, it would in many places come by degrees not to be required at all; the corporation, specially so denominated, or municipal government, acquiring by length of usage an exclusive privilege in election of members of parliament, as they did in local administration. This, at least, appears to me a more probable hypothesis, than that of Dr. Brady, who limits the original right of election in all corporate boroughs to the aldermen or other capital burgesses.†

Members of the House of Commons.

The members of the house of commons, from this occasional disuse of ancient boroughs, as well as from the creation of new ones, underwent some fluctuation during the period subject to our review. Two hundred citizens and burgesses sat in the parliament held by Edward I. in his twenty-

* 3 Prynne, p. 257. de assensu totius communitatis predictæ elegerunt R. W. so in several other instances quoted in the ensuing pages.

† Brady on Boroughs, p. 132, &c.

third year, the earliest epoch of acknowledged representation. But in the reigns of Edward III. and his three successors, about ninety places, on an average, returned members, so that we may reckon this part of the commons at one hundred and eighty.* These, if regular in their duties, might appear an over-balance for the seventy-four knights who sat with them. But the dignity of ancient lineage, territorial wealth, and military character, in times when the feudal spirit was hardly extinct, and that of chivalry at its height, made these burghers vail their heads to the landed aristocracy. It is pretty manifest, that the knights, though doubtless with some support from the representatives of towns, sustained the chief brunt of battle against the crown. The rule and intention of our old constitution was, that each county, city or borough should elect deputies out of its own body, resident among themselves, and consequently acquainted with their necessities and grievances.† It would be very interesting to discover at what time, and by what degrees, the practice of election swerved from this strictness.

* Willis, Notitia Parliamentaria, vol. iii. p. 96, &c. Prynne, p. 224, &c.

† In 4 Edw. II. the sheriff of Rutland made this return: Eligi feci in pleno comitatu, loco duorum militum, eo quod milites non sunt in hoc comitatu commorantes, duos homines de comitatu Rutland, de discretioribus et ad laborandum potentioribus, &c. 3 Prynne, p. 170. But this deficiency of actual knights soon became very common. In 19 E. II. there were twenty-eight members returned from shires, who were not knights, and but twenty-seven who were such. The former had at this time only two shillings or three shillings a day for their wages, while the real knights had four shillings. 4 Prynne, p. 53. 74. But in the next reign, their wages were put on a level.

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But I have not been able to trace many steps of the transition. The number of practising lawyers who sat in parliament, of which there are several complaints, seems to afford an inference that it had begun in the reign of Edward III. Besides several petitions of the commons, that none but knights or reputable squires should be returned for shires, an ordinance was made in the forty-sixth of his reign that no lawyer practising in the king's court, nor sheriff during his shrievalty, be returned knight for a county; because these lawyers put forward many petitions in the name of the commons, which only concerned their clients.* This probably was truly alledged, as we may guess from the vast number of proposals for changing the course of legal process, which fill the rolls during this reign. It is not to be doubted, however, that many practising lawyers were men of landed estate in their respective counties.

An act in the first year of Henry V. directs that none be chosen knights, citizens, or burgesses, who are not resident within the place for which they are returned on the day of the date of the writ.† This statute apparently indicates a point of time, when the deviation from the line of law was frequent enough to attract notice, and yet not so established as to pass for an unavoidable irregularity. It proceeded however from great and general causes, which new laws, in this instance very fortunately, are utterly incompetent to with-

* Rot. Parl. vol. ii. p. 310. † 1 H. V. c. 1.

stand. There cannot be a more apposite proof of the inefficacy of human institutions to struggle against the steady course of events, than this unlucky statute of Henry V., which is almost a solitary instance in the law of England, wherein the principle of desuetude has been avowedly set up against an unrepealed enactment. I am not aware, at least, of any other, which not only the house of commons, but the court of king's bench has deemed itself at liberty to declare unfit to be observed.* Even at the time when it was enacted, this law had probably as such very little effect. But still the plurality of elections were made, according to ancient usage as well as statute, out of the constituent body. The contrary instances were exceptions to the rule; but exceptions increasing continually, till they subverted the rule itself. Prynne has remarked, that we chiefly find Cornish sirnames among the representatives of Cornwall, and those of northern families among the returns from the north. Nor do the members for shires and towns seem to have been much interchanged; the names of the former belonging to the most ancient families, while those of the latter have a more plebeian cast.† In the reign of Edward IV., and not before, a very few of the bur-

* See the case of Dublin university, in the first volume of Peckwell's Reports of contested Elections. Note D. p. 53. The statute itself was repealed by 14 G. III. c. 58.

† By 23 H. VI. c. 15. none but gentlemen born, generosi a nativitate, are capable of sitting in parliament as knights of counties; an election was set aside 39 H. VI. because the person returned was not of gentle birth. Prynne's third Register, p. 161.

gesses bear the addition of esquire in the returns; which became universal in the middle of the succeeding century.*

Irregularity of elections.

Even county elections seem in general, at least in the fourteenth century, to have been ill attended, and left to the influence of a few powerful and active persons. A petitioner against an undue return in the 12th of Edward II. complains that, whereas he had been chosen knight for Devon, by Sir William Martin, bishop of Exeter, with the consent of the county, yet the sheriff had returned another.† In several indentures of a much later date, a few persons only seem to have been concerned in the election, though the assent of the community be expressed.‡ These irregularities, which it would be exceedingly erroneous to convert, like Hume, into lawful customs, resulted from the abuses of the sheriff's power, which, when parliament sat only for a few weeks with its hands full of business, were almost sure to escape with impunity. They were sometimes also countenanced, or rather instigated by the

Influence of the crown upon them.

* Willis, Notitia Parliamentaria. Prynne's fourth Register, p. 1184. A letter in that authentic and interesting accession to our knowledge of ancient times, the Paston collection, shews that eager canvass was sometimes made by country gentlemen in Edward IV.'s reign to represent boroughs. This letter throws light at the same time on the creation or revival of boroughs. The writer tells Sir John Paston: "If ye miss to be burgess of Maldon, and my lord chamberlain will, ye may be in another place; there be a dozen towns in England, that choose no burgess, which ought to do it, ye may be set in for one of those towns an' ye be friended." This was in 1472. vol. ii. p. 107.

† Glanvil's Reports of Elections, edit. 1774. Introduction, p. xii.

‡ Prynne's third Register, p. 171.

crown, which, having recovered in Edward II.'s reign the prerogative of naming the sheriffs, surrendered by an act of his father,* filled that office with its creatures, and constantly disregarded the statute forbidding their continuance beyond a year. Without searching for every passage that might illustrate the interference of the crown in elections, I will mention two or three leading instances. When Richard II. was meditating to overturn the famous commission of reform, he sent for some of the sheriffs, and required them to permit no knight or burgess to be elected to the next parliament, without the approbation of the king and his council. The sheriffs replied, that the commons would maintain their ancient privilege of electing their own representatives.† The parliament of 1397, which attainted his enemies, and left the constitution at his mercy, was chosen, as we are told, by dint of intimidation and influence.‡ Thus also that of Henry VI. held at Coventry in 1460, wherein the duke of York and his party were attainted, is said to have been unduly returned by the like means. This is rendered probable by a petition presented to it by the sheriffs, praying indemnity for all which they had done in

* 28 E. I. c. 8. 9 E. II. It is said that the sheriff was elected by the people of his county in the Anglo-Saxon period; no instance of this however, according to Lord Lyttleton, occurs after the conquest. Shrievalties were commonly sold by the Norman kings. Hist. of Henry II. vol. ii. p. 221.

† Vita Ricardi II. p. 85.

‡ Otterbourne, p. 191. He says of the knights returned on this occasion, that they were not elected per communitatem, ut mos exigit, sed per regiam voluntatem.

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relation thereto contrary to law.* An act passed according to their prayer, and in confirmation of elections. A few years before, in 1455, a singular letter under the king's signet is addressed to the sheriffs, reciting that "we be enfourmed there is busy labour made in sondry wises by certaine persons for the chesyng of the said knights, ... of which labour we marvaille greatly, insomuche as it is nothing to the honour of the laborers, but ayenst their worship; it is also ayenst the lawes of the lande," with more to that effect; and enjoining the sheriff to let elections be free and the peace kept.† There was certainly no reason to wonder that a parliament, which was to shift the virtual sovereignty of the kingdom into the hands of one whose claims were known to extend much farther, should be the object of tolerably warm contests. Thus in the Paston letters, we find several proofs of the importance attached to parliamentary elections by the highest nobility.‡

Constitution of the House of Lords.

The House of Lords, as we left it in the reign of Henry III., was entirely composed of such persons holding lands by barony as were summoned by particular writ to parliament.§ Tenure and

*. Prynne's second Reg. p. 141. Rot. Parl. vol. v. p. 367.

† Id. p. 450.

‡ vol. i. p. 96. 98.; vol. ii. p. 99. 105.; vol. iii. p. 243.

§ Upon this dry and obscure subject of inquiry, the nature and constitution of the house of lords during this period, I have been much indebted to the first part of Prynne's Register, and to West's Inquiry into the manner of creating peers; which, though written with a party motive, to serve the ministry of 1719 in the peerage-bill, deserves, for the perspicuity of the method and style, to be reckoned among the best of our constitutional dissertations.

summons were both essential at this time in order to render any one a lord of parliament; the first by the ancient constitution of our feudal monarchy from the conquest; the second by some regulation or usage of doubtful origin, which was thoroughly established before the conclusion of Henry III.'s reign. This produced of course a very marked difference between the greater, and the lesser or unparliamentary barons. The tenure of the latter, however, still subsisted, and though too inconsiderable to be members of the legislature, they paid relief as barons, they might be challenged on juries, and, as I presume, by parity of reasoning, were entitled to trial by their peerage. These lower barons, or, more commonly, tenants by parcels of baronies,* may be dimly traced to the latter years of Edward III.† But many of them were successively summoned to parliament, and thus

* Baronies were often divided by descent among females into many parts, each retaining its character as a fractional member of a barony. The tenants in such case were said to hold of the king by the third, fourth, or twentieth part of a barony, and did service or paid relief in such proportion.

† Madox, Baronia Anglica, p. 42. and 58. West's Inquiry, p. 28. 33. That a baron could only be tried by his fellow barons was probably a rule as old as the trial per pais of a commoner. In 4 E. III. Sir Simon Bereford having been accused before the lords in parliament of aiding and advising Mortimer in his treasons, they declared with one voice, that he was not their peer; wherefore they were not bound to judge him as a peer of the land; but inasmuch as it was notorious, that he had been concerned in usurpation of royal powers, and murder of the liege lord, (as they style Edward II.) the lords, as judges of parliament, by assent of the king in parliament, awarded and adjudged him to be hanged. A like sentence with a like protestation was passed on Mautravers and Gournay. There is a very remarkable anomaly in the case of Lord Berkley, who, though undoubtedly a baron, his ancestors having been summoned from the earliest date of writs, put himself on his trial in parliament by twelve knights of the county of Glocester. Rot. Parl. vol. ii. p. 53. Rymer, t. iv. p. 734.

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recovered the former lustre of their rank; while the rest fell gradually into the station of commoners, as tenants by simple knight-service.

Baronial tenure required for lords spiritual.

As tenure without summons did not entitle any one to the privileges of a lord of parliament, so no spiritual person at least ought to have been summoned without baronial tenure. The prior of St. James at Northampton, having been summoned in the twelfth of Edward II., was discharged upon his petition, because he held nothing of the king by barony, but only in frankalmoign. The prior of Bridlington, after frequent summonses, was finally left out, with an entry made in the roll, that he held nothing of the king. The abbot of Leicester had been called to fifty parliaments; yet, in the 25th of Edward III., he obtained a charter of perpetual exemption, reciting that he held no lands or tenements of the crown by barony or any such service as bound him to attend parliaments or councils.* But great irregularities prevailed in the rolls of chancery, from which the writs to spiritual and temporal peers were taken; arising in part, perhaps, from negligence, in part from wilful perversion; so that many abbots and priors, who like these had no baronial tenure, were summoned at times and subsequently omitted, of whose actual exemption we have no record. Out of one hundred and twenty-two abbots, and forty-one priors, who at some time or other sat in parliament, but twenty-five of the former, and two of the latter

* Prynne, p. 142, &c. West's Inquiry.

were constantly summoned; the names of forty occur only once, and those of thirty-six others not more than five times.* Their want of baronial tenure, in all probability, prevented the repetition of writs, which accident or occasion had caused to issue.†

Barons called by writ.

The ancient temporal peers are supposed to have been intermingled with persons who held nothing of the crown by barony, but attended in parliament solely by virtue of the king's prerogative exercised in the writ of summons.‡ These have been called barons by writ; and it seems to be denied by no one, that, at least under the three first Edwards, there were some of this description in parliament. But after all the labours of Dugdale and others in tracing the genealogies of our ancient aristocracy, it is a problem of much difficulty to distinguish these from the territorial

* Prynne, p. 141.

† It is worthy of observation, that the spiritual peers summoned to parliament were in general considerably more numerous than the temporal. Prynne, p. 114. This appears among other causes to have saved the church from that sweeping reformation of its wealth, and perhaps of its doctrines, which the commons were thoroughly inclined to make under Richard II. and Henry IV. Thus the reduction of the spiritual lords by the dissolution of monasteries was indispensably required to bring the ecclesiastical order into due subjection to the state.

‡ Perhaps it can hardly be said that the king's prerogative compelled the party summoned, not being a tenant by barony, to take his seat. But though several spiritual persons appear to have been discharged from attendance on account of their holding nothing by barony, as has been just observed, yet there is, I believe, no instance of any layman's making such an application. The terms of the ancient writ of summons, however, in fide et *homagio* quibus nobis tenemini, afford a presumption that a feudal tenure was, in construction of law, the basis of every lord's attendance in parliament. This form was not finally changed to the present, in fide et *ligeantiâ*, till the 46th of Edw. III. Prynne's 1st Register, p. 206.

barons. As the latter honours descended to female heirs, they passed into new families and new names, so that we can hardly decide of one summoned for the first time to parliament, that he did not inherit the possession of a feudal barony. Husbands of baronial heiresses were almost invariably summoned in their wives' right, though frequently by their own names. They even sat after the death of their wives, as tenants by the courtesy.* Again, as lands, though not the subject of frequent transfer, were, especially before the statute de donis, not inalienable, we cannot positively assume, that all the right heirs of original barons had preserved those estates upon which their barony had depended.† If we judge, however, by the lists of those summoned, according to the best means in our power, it will appear that

* Collins's Proceedings on Claims of Baronies, p. 14. and 72.

† Prynne speaks of "the alienation of baronies by sale, gift, or marriage, after which the new purchasers were summoned instead," as if it frequently happened. 1st Register, p. 239. And several instances are mentioned in the Bergavenny case, (Collins's Proceedings, p. 113.) where land-baronies having been entailed by the owners on their heirs male, the heirs general have been excluded from inheriting the dignity.

It is well known, notwithstanding these ancient precedents, that the modern doctrine does not admit any right in the purchaser of a territorial peerage, such as Arundel, to a writ of summons, or consequently to any privilege as a lord of parliament. But it might be a speculative question, whether such a purchaser would not become a real, though unparliamentary baron, and entitled as such to a trial by the peers. For though the king, assisted, if he please, by the advice of the house of lords, is finally and exclusively to decide upon claims to parliamentary privileges, yet the dignity of peerage, whether derived under ancient tenure or a royal patent, is vested in the possessor by act of law, whereof the ordinary courts of justice may incidentally take cognizance. See the case of R. v. Knowles, Salkeld's Reports, p. 509., the principles of which will never be controverted by any one acquainted with the original constitution of this country.

the regular barons by tenure were all along very far more numerous than those called by writ; and that from the end of Edward III.'s reign, no spiritual persons, and few if any laymen, except peers created by patent, were summoned to parliament, who did not hold territorial baronies.*

With respect to those who were indebted for their seats among the lords to the king's writ, there are two material questions: whether they acquired an hereditary nobility by virtue of the writ; and, if this be determined against them, whether they had a decisive, or merely a deliberative voice in the house. Now, for the first question, it seems that, if the writ of summons conferred an estate of inheritance, it must have done so either by virtue of its terms, or by established construction and precedent. But the writ contains no words by which such an estate can in law be limited; it summons the person addressed to attend in parliament in order to give his advice on the public business, but by no means implies that this advice will be required of his heirs, or even of himself on any other occasion. The strongest expression is "vobiscum et *cæteris* prælatis, magnatibus et proceribus," which appears to place the party on a sort of level with the peers. But the words magnates and proceres are used very largely in ancient language, and, down to the time of Edward III., comprehend

* Prynne's 1st Register, p. 237. This must be understood to mean that no new families were summoned; for the descendants of some who are not supposed to have held land-baronies may constantly be found in later lists.

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the king's ordinary council, as well as his barons. Nor can these, at any rate, be construed to pass an inheritance, which, in the grant of a private person, much more of the king, would require express words of limitation. In a single instance, the writ of summons to Sir Henry de Bromflete, (27 H. VI.) we find these remarkable words: Volumus enim vos et hæredes vestros masculos de corpore vestro legitimè exeuntes barones de Vescy existere. But this Sir Henry de Bromflete was the lineal heir of the ancient barony de Vesci.* And if it were true that the writ of summons conveyed a barony of itself, there seems no occasion to have introduced these extraordinary words of creation or revival. Indeed there is less necessity to urge these arguments from the nature of the writ, because the modern doctrine, which is entirely opposite to what has here been suggested, asserts that no one is ennobled by the mere summons, unless he has rendered it operative by taking his seat in parliament; distinguishing it in this from a patent of peerage, which requires no act of the party for its completion.† But this could be supported by nothing except long usage. If however we recur to the practice of former times, we shall find that no less than ninety-eight laymen were summoned

* West's Inquiry. Prynne, who takes rather lower ground than West, and was not aware of Sir Henry de Bromflete's descent, admits that a writ of summons to any one, naming him baron, or dominus, as Baroni de Greystocke, Domino de Furnival, did give an inheritable peerage; not so a writ generally worded, naming the party knight or esquire, unless he held by barony.

† Lord Abergavenny's case, 12 Coke's Reports; and Collins's Proceedings on claims of baronies by writ, p. 61.

once only to parliament, none of their name occurring afterwards; and fifty others two, three, or four times. Some were constantly summoned during their lives, none of whose posterity ever attained that honour.* The course of proceeding therefore, previous to the accession of Henry VII., by no means warrants the doctrine which was held in the latter end of Elizabeth's reign,† and has since been too fully established by repeated precedents to be shaken by any reasoning. The foregoing observations relate to the more ancient history of our constitution, and to the plain matter of fact as to those times, without considering what political cause there might be to prevent the crown from introducing occasional counsellors into the house of lords.

Bannerets summoned to house of lords.

It is manifest by many passages in these records, that bannerets were frequently summoned to the upper house of parliament, constituting a distinct class inferior to barons, though generally named together, and ultimately confounded with them.‡ Barons are distinguished by the appellation of Sire, bannerets have only that of Monsieur, as le Sire de Berkeley, le Sire de Fitzwalter, Monsieur Richard

* Prynne's 1st Register, p. 232. Elsynge, who strenuously contends against the writ of summons conferring an hereditary nobility, is of opinion that the party summoned was never omitted in subsequent parliaments, and consequently was a peer for life. p. 43. But more regard is due to Prynne's later inquiries.

† Case of Willoughby, Collins, p. 8.: of Dacres, p. 41.: of Abergavenny, p. 119. But see the case of Grey de Ruthyn, p. 222. and 230. where the contrary position is stated by Selden upon better grounds.

‡ Rot. Parl. vol. ii. p. 147. 309.; vol. iii. p. 100. 386. 424.; vol iv. p. 374. Rymer, t. vii. p. 161.

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Scrop, Monsieur Richard Stafford. In the 7th of Richard II., Thomas Camoys having been elected knight of the shire for Surrey, the king addresses a writ to the sheriff, directing him to proceed to a new election, cum hujusmodi bänneretti ante hæc tempora in milites comitatus ratione alicujus parliamenti eligi minime consueverunt. Camoys was summoned by writ to the same parliament. It has been inferred from hence by Selden, that he was a baron, and that the word bänneret is merely synonymous.* But this is contradicted by too many passages. Bannerets had so far been considered as commoners some years before, that they could not be challenged on juries.† But they seem to have been more highly estimated at the date of this writ.

The distinction however between barons and bannerets died away by degrees. In the 2d of Henry VI.‡ Scrop of Bolton is called le Sire de Scrop; a proof that he was then reckoned among the barons. The bannerets do not often appear afterwards by that appellation as members of the upper house. Bannerets, or, as they are called, banrents, are enumerated among the orders of Scottish nobility

* Selden's Works, vol. iii. p. 764. Selden's opinion that bannerets in the lords' house were the same as barons may seem to call on me for some contrary authorities, in order to support my own assertion, besides the passages above quoted from the rolls, of which he would naturally be supposed a more competent judge. I refer therefore to Spelman's Glossary, p. 74.: Whitelocke on Parliamentary Writ, vol. i. p. 313. and Elsynge's Method of holding parliaments, p. 65.

† Puis un fut chalengé purce qu'il fut a banniere, et non allocatur, car s'il soit a banniere, et ne tient pas par baronie, il sera en l'assise. Year Book 22 Edw. III. fol. 18. a. apud West's Inquiry, p. 22.

‡ Rot. Parl. vol. iv. p. 201.

in the year 1428, when the statute directing the common lairds or tenants in capite to send representatives was enacted; and a modern historian justly calls them an intermediate order between the peers and lairds.* Perhaps a consideration of these facts, which have frequently been overlooked, may tend in some measure to explain the occasional discontinuance, or sometimes the entire cessation, of writs of summons to an individual or his descendants; since we may conceive that bannerets, being of a dignity much inferior to that of barons, had no such inheritable nobility in their blood as rendered their parliamentary privileges a matter of right. But whether all those who without any baronial tenure received their writs of summons to parliament belonged to the order of bannerets, I cannot pretend to affirm; though some passages in the rolls might rather lead to such a supposition.

The second question relates to the right of suffrage possessed by these temporary members of the upper house. It might seem plausible certainly to conceive, that the real and ancient aristocracy would not permit their powers to be impaired by numbering the votes of such as the king might please to send among them, however they might allow them to assist in their debates. But I am much more inclined to suppose that they were in all respects on an equality with other peers during their actual attendance in parlia-

* Pinkerton's Hist. of Scotland, vol. i. p. 357. and 365.

ment. For, 1. They are summoned by the same writ as the rest, and their names are confused among them in the lists; whereas the judges and ordinary counsellors are called by a separate writ, vobiscum et cæteris de consilio nostro, and their names are entered after those of the peers.* 2. Some, who do not appear to have held land-baronies, were constantly summoned from father to son, and thus became hereditary lords of parliament, through a sort of prescriptive right, which probably was the foundation of extending the same privilege afterwards to the descendants of all who had once been summoned. There is no evidence that the family of Scrope, for example, which was eminent under Edward III. and subsequent kings, and gave rise to two branches, the lords of Bolton and Masham, inherited any territorial honour.† 3. It is very difficult to obtain any direct proof as to the right of voting, because

* West, whose business it was to represent the barons by writ as mere assistants without suffrage, cites the writ to them rather disingenuously, as if it ran vobiscum, et cum prælatis, magnatibus ac proceribus, omitting the important word cæteris. p. 35. Prynne however, from whom West has borrowed a great part of his arguments, does not seem to go the length of denying the right of suffrage to persons so summoned. 1st Register, p. 237.

† These descended from two persons, each named Geoffrey le Scrope, chief justices of K.B. and C.B. at the beginning of Edward III.'s reign. The name of one of them is once found among the barons, but I presume this to have been an accident, or mistake in the roll; as he is frequently mentioned afterwards among the judges. Scrope, chief justice of K.B. was made a *banneret* in 14 E. III. He was the father of Henry Scrope of Masham, a considerable person in Edward III. and Richard II.'s government, whose grandson Lord Scrope of Masham was beheaded for a conspiracy against Henry V. There was a family of Scrupe as old as the reign of Henry II.; but it is not clear, notwithstanding Dugdale's assertion, that the Scropes descended from them, or at least that they held the same

the rolls of parliament do not take notice of any debates; but there happens to exist one remarkable passage, in which the suffrages of the lords are individually specified. In the first parliament of Henry IV., they were requested by the earl of Northumberland, to declare what should be done with the late king Richard. The lords then present agreed that he should be detained in safe custody; and on account of the importance of this matter, it seems to have been thought necessary to enter their names upon the roll in these words: The names of the lords concurring in their answer to the said question here follow; to wit, the archbishop of Canterbury, and fourteen other bishops; seven abbots; the prince of Wales, the duke of York, and six earls; nineteen barons, styled thus; le Sire de Roos, or, le Sire de Grey de Ruthyn. Thus far the entry has nothing singular; but then follow these nine names: Monsieur Henry Percy, Monsieur Richard Scrop, le Sire Fitz-hugh, le Sire de Bergeveny, le Sire de Lomley, le Baron de Greystock, le Baron de Hilton, Monsieur Thomas Erpyngham, Chamberlayn, Monsieur Mayhewe Gournay. Of these nine, five were undoubtedly barons, from whatever cause misplaced in order.

lands: nor were the Scrupes barons, as appears by their paying a relief of only sixty marks for three knights' fees. Dugdale's baronage, p. 654.

The want of consistency in old records throws much additional difficulty over this intricate subject. Thus Scrope of Masham, though certainly a baron, and tried next year by the peers, is called Chevalier in an instrument of 1 H. V. Rymer, t. ix. p. xiii. So in the indictment against Sir John Oldcastle, he is constantly styled knight, though he had been summoned several times as Lord Cobham, in right of his wife, who inherited that barony. Rot. Parl. vol. iv. p. 107.

Scrop was summoned by writ; but his title of Monsieur, by which he is invariably denominated, would of itself create a strong suspicion that he was no baron, and in another place, we find him reckoned among the bannerets. The other three do not appear to have been summoned, their writs probably being lost. One of them, Sir Thomas Erpyngham, a statesman well known in the history of those times, is said to have been a banneret;* certainly he was not a baron. It is not unlikely that the two others, Henry Percy (Hotspur) and Gournay, an officer of the household, were also bannerets; they cannot at least be supposed to be barons, neither were they ever summoned to any subsequent parliament. Yet in the only record we possess of votes actually given in the house of lords, they appear to have been reckoned among the rest.†

Creation of peers by statute.

The next method of conferring an honour of peerage was by creation in parliament. This was adopted by Edward III. in several instances, though always, I believe, for the higher titles of duke or earl. It is laid down by lawyers, that whatever the king is said, in an ancient record, to have done in full parliament, must be taken to have proceeded from the whole legislature. As a question of fact, indeed, it might be doubted whether, in many proceedings where this expression is used, and especially in the creation of peers, the assent of the commons was specifi-

* Blomefield's Hist. of Norfolk, vol. iii. p. 645 (folio edit.)

† Rot. Parl. vol. iii. p. 427.

cally and deliberately given. It seems hardly consonant to the circumstances of their order under Edward III. to suppose their sanction necessary in what seemed so little to concern their interest. Yet there is an instance, in the fortieth year of that prince, where the lords individually, and the commons with one voice, are declared to have consented, at the king's request, that the lord de Coucy, who had married his daughter, and was already possessed of estates in England, might be raised to the dignity of an earl, whenever the king should determine what earldom he would confer upon him.* Under Richard II., the marquisate of Dublin is granted to Vere by full consent of all the estates. But this instrument, besides the unusual name of dignity, contained an extensive jurisdiction and authority over Ireland.† In the same reign Lancaster was made duke of Guienne, and the duke of York's son created earl of Rutland, to hold during his father's life. The consent of the lords and commons is expressed in their patents, and they are entered upon the roll of parliament.‡ Henry V. created his brothers dukes of Bedford and Gloucester, by request of the lords and commons.§ But the patent of Sir John Cornwall, in the 10th of Henry VI., declares him to be made Lord Fanhope "by consent of the lords, in the presence of the three estates of parliament;" as if it were de-

* vol. ii. p. 290.
† vol. iii. p. 209.
‡ Id. p. 263, 264.
§ vol. iv. p. 17.

signed to shew that the commons had not a legislative voice in the creation of peers.*

And by patent.

The mention I have made of creating peers by act of parliament has partly anticipated the modern form of letters patent, with which the other was nearly allied. The first instance of a barony conferred by patent was in the tenth year of Richard II., when Sir John Holt, a judge of the Common Pleas, was created Lord Beauchamp of Kidderminster. Holt's patent, however, passed while Richard was endeavouring to act in an arbitrary manner; and in fact he never sat in parliament, having been attainted in that of the next year, by the name of Sir John Holt. In a number of subsequent patents down to the reign of Henry VII., the assent of parliament is expressed, though it very frequently happens, that no mention of it occurs on the parliamentary roll. And in some instances, the roll speaks to the consent of parliament, where the patent itself is silent.†

Clergy summoned to attend parliament.

It is now perhaps scarcely known by many persons not unversed in the constitution of their country, that, besides the bishops and baronial abbots, the inferior clergy were regularly summoned at every parliament. In the writ of summons to a bishop, he is still directed to cause the

* Id. p. 401.

† West's Inquiry, p. 65. This writer does not allow that the king possessed the prerogative of creating new peers without consent of parliament. But Prynne, (1st Register, p. 225.) who generally adopts the same theory of peerage as West, strongly asserts the contrary; and the party views of the latter's treatise, which I mentioned above, should be kept in sight. It was his object to prove, that the pending bill to limit the members of the peerage was conformable to the original constitution.

dean of his cathedral church, the archdeacon of his diocese, with one proctor from the chapter of the former, and two from the body of his clergy, to attend with him at the place of meeting. This might by an inobservant reader be confounded with the summons to the convocation, which is composed of the same constituent parts, and, by modern usage, is made to assemble on the same day. But it may easily be distinguished by this difference; that the convocation is provincial, and summoned by the metropolitans of Canterbury and York; whereas the clause, commonly denominated præmunientes, (from its first word,) in the writ to each bishop proceeds from the crown, and enjoins the attendance of the clergy at the national council of parliament.*

The first unequivocal instance of representatives appearing for the lower clergy is in the year 1255, when they are expressly named by the author of the Annals of Burton.† They preceded, therefore, by a few years, the house of commons; but the introduction of each was founded upon the same principle. The king required the clergy's money, but dared not take it without their consent.‡ In the double parliament, if so we may call it, sum-

* Hody's History of Convocations, p. 12. Dissertatio de antiquâ et modernâ Synodi Anglicani constitutione, prefixed to Wilkins's Concilia, t. i.

† 2 Gale, Scriptores Rer. Anglic. t. ii. p. 355. Hody, p. 345. Atterbury (Rights of Convocations, p. 295. 315.) endeavours to shew that the clergy had been represented in parliament from the conquest, as well as before it. Many of the passages he quotes are very inconclusive; but possibly there may be some weight in one from Matthew Paris, ad ann. 1247, and two or three writs of the reign of Henry III.

‡ Hody, p. 381. Atterbury's Rights of Convocations, p. 221.

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moned in the eleventh of Edward I. to meet at Northampton and York, and divided according to the two ecclesiastical provinces, the proctors of chapters for each province, but not those of the diocesan clergy, were summoned through a royal writ addressed to the archbishops. Upon account of the absence of any deputies from the lower clergy, these assemblies refused to grant a subsidy. The proctors of both descriptions appear to have been summoned by the præmunientes clause in the 22d, 23d, 24th, 28th, and 35th years of the same king; but in some other parliaments of his reign the præmunientes clause is omitted.* The same irregularity continued under his successor; and the constant usage of inserting this clause in the bishop's writ is dated from the twenty-eighth of Edward III.†

It is highly probable, that Edward I., whose legislative mind was engaged in modelling the constitution on a comprehensive scheme, designed to render the clergy an effective branch of parliament, however their continual resistance may have defeated the accomplishment of this intention.‡ We find an entry upon the roll of his parliament at Carlisle, containing a list of all the proctors deputed to it by the several dioceses of the kingdom. This may be reckoned a clear proof of their parliamentary attendance during his reign under the præmunientes clause; since the province of Canterbury could not have been present in con-

* Hody, p. 386. Atterbury, p. 222.

† Hody, p. 391.

‡ Gilbert's Hist. of Exchequer, p. 47.

vocation at a city beyond its limits.* And indeed, if we were to found our judgement merely on the language used in these writs, it would be hard to resist a very strange paradox, that the clergy were not only one of the three estates of the realm, but as essential a member of the legislature by their representatives as the commons.† They are summoned in the earliest writ extant, (23 E. I.) ad tractandum, ordinandum et faciendum nobiscum, et cum cæteris prælatis, proceribus, ac aliis incolis regni nostri; in that of the next year, ad ordinandum de quantitate et modo subsidii; in that of the twenty-eighth, ad faciendum et consentiendum his, quæ tunc de communi consilio ordinari contigerit. In later times, it ran sometimes ad faciendum et consentiendum, sometimes only ad consentiendum; which, from the fifth of Richard II., has been the term invariably adopted.‡ Now, as it is usual to infer from the same words when introduced into the writs for election of the commons, that they possessed an enacting power implied in the words ad faciendum, or at least to deduce the necessity of their assent from the words

*Rot. Parl. vol. i. p. 189. Atterbury, p. 229.

† The lower house of convocation, in 1547, terrified at the progress of reformation, petitioned, that "according to the tenor of the king's writ, and the ancient customs of the realm, they might have room and place, and be associated with the commons in the nether house of this present parliament, as members of the commonwealth and the king's most humble subjects." Burnet's Hist. of Reformation, vol. ii. Appendix. No. 17. This assertion that the clergy had ever been associated as one body with the commons is not borne out by any thing that appears on our records, and is contradicted by many passages. But it is said, that the clergy were actually so united with the commons in the Irish parliament till the Reformation. Gilbert's Hist. of the Exchequer, p. 57.

‡ Hody, p. 392.

ad consentiendum, it should seem to follow, that the clergy were invested, as a branch of the parliament, with rights no less extensive. It is to be considered, how we can reconcile these apparent attributes of political power with the unquestionable facts, that almost all laws, even while they continued to attend, were passed without their concurrence, and that, after some time, they ceased altogether to comply with the writ.*

The solution of this difficulty can only be found in that estrangement from the common law and the temporal courts, which the clergy throughout Europe were disposed to affect. In this country, their ambition defeated its own ends; and while they endeavoured by privileges and immunities to separate themselves from the people, they did not perceive that the line of demarcation thus strongly traced would cut them off from the sympathy of common interests. Every thing which they could call of ecclesiastical cognizance was drawn into their own courts; while the administration of what they contemned as a barbarous system, the temporal law of the land, fell into the hands of lay judges. But these were men not less subtle, not less ambitious, not less attached to their profession than themselves; and wielding, as they did in the courts of Westminster, the delegated sceptre of judicial sovereignty, they soon began to controul

* The præmunientes clause in a bishop's writ of summons was so far regarded down to the Reformation, that proctors were elected, and their names returned upon the writ; though the clergy never attended from the beginning of the fifteenth century, and gave their money only in convocation. Since the Reformation, the clause has been preserved for form merely in the writ. Wilkins, Dissertatio, ubi supra.

the spiritual jurisdiction, and to establish the inherent supremacy of the common law. From this time an inveterate animosity subsisted between the two courts, the vestiges of which have only been effaced by the liberal wisdom of modern ages. The general love of the common law, however, with the great weight of its professors in the king's council and in parliament, kept the clergy in surprizing subjection. None of our kings after Henry III. were bigots; and the constant tone of the commons serves to shew, that the English nation were thoroughly averse to ecclesiastical influence, whether of their own church or the see of Rome.

It was natural therefore to withstand the interference of the clergy summoned to parliament in legislation, as much as that of the spiritual court in temporal jurisdiction. With the ordinary subjects, indeed, of legislation they had little concern. The oppressions of the king's purveyors, or escheators, or officers of the forests, the abuses or defects of the common law, the regulations necessary for trading towns and sea-ports, were matters that touched them not, and to which their consent was never required. And, as they well knew there was no design in summoning their attendance but to obtain money, it was with great reluctance that they obeyed the royal writ, which was generally obliged to be enforced by an ar-

* Hody, p. 396. 403. &c. In 1314, the clergy protest even against the recital of the king's writ to the archbishop, directing him to summon the clergy of his province, in his letters mandatory, declaring that the English clergy had not been accustomed, nor

chiepiscopal mandate.* Thus instead of an assembly of deputies from an estate of the realm they became a synod or convocation. And it seems probable that in most, if not all, instances where the clergy are said in the roll of parliament to have presented their petitions, or are otherwise mentioned as a deliberative body, we should suppose the convocation alone of the province of Canterbury to be intended.* For that of York seems to have been always considered as inferior, and even ancillary to the greater province, voting subsidies, and even assenting to canons, without deliberation, in compliance with the example of Canterbury;† the convocation of which province consequently assumed the importance of a national council. But in either point of view, the proceedings of this ecclesiastical assembly, collateral in a certain sense to parliament, yet very intimately connected with it, whether sitting by virtue of the præmunientes clause or otherwise, deserve some notice in a constitutional history.

In the sixth year of Edward III., the proctors of the clergy are specially mentioned, as present at the speech pronounced by the king's commissioner, and retired, along with the prelates, to consult together upon the business submitted to their deliberation. They proposed accordingly a

ought by right, to be convoked by the king's authority. Atterbury, p. 230.

* Hody, p. 425. Atterbury, p. 42. 233. The latter seems to think that the clergy of both provinces never actually met in a national council, or house of parliament, under the præmunientes writ, after the reign of Edward II., though the proctors were duly returned. But Hody does not go quite so far, and Atterbury had a particular motive to enhance the influence of the convocation for Canterbury.

† Atterbury, p. 46.

sentence of excommunication against disturbers of the peace, which was assented to by the lords and commons. The clergy are said afterwards to have had leave, as well as the knights, citizens and burgesses, to return to their homes; the prelates and peers continuing with the king.* This appearance of the clergy in full parliament is not perhaps so decisively proved by any later record. But in the eighteenth of the same reign several petitions of the clergy are granted by the king and his council, entered on the roll of parliament, and even the statute roll, and in some respects are still part of our law.† To these it seems highly probable that the commons gave no assent; and they may be reckoned among the other infringements of their legislative rights. It is remarkable, that in the same parliament, the commons, as if apprehensive of what was in preparation, besought the king that no petition of the clergy might be granted, till he and his council should have considered whether it would turn to the prejudice of the lords or commons.‡

A series of petitions from the clergy, in the twenty-fifth of Edward III., had not probably any real assent of the commons, though it is once mentioned in the enacting words, when they were drawn into a statute.§ Indeed the petitions cor-

* Rot. Parl. vol. ii. p. 64, 65.

† 18 E. III. stat. 3. Rot. Parl. vol. ii. p. 151. This is the parliament in which it is very doubtful whether any deputies from cities and boroughs had a place. The pretended statutes were therefore every way null; being falsely imputed to an incomplete parliament.

‡ ibid.

§ 25 E. III. stat. 3.

respond so little with the general sentiment of hostility towards ecclesiastical privileges manifested by the lower house of parliament, that they would not easily have obtained its acquiescence. The convocation of the province of Canterbury presented several petitions in the fiftieth year of the same king, to which they received an assenting answer; but they are not found in the statute-book. This however produced the following remonstrance from the commons at the next parliament: "Also the said commons beseech their lord the king, that no statute nor ordinance be made at the petition of the clergy, unless by assent of your commons; and that your commons be not bound by any constitutions which they make for their own profit without the commons' assent. For they will not be bound by any of your statutes or ordinances made without their assent."* The king evaded a direct answer to this petition. But the province of Canterbury did not the less present their own grievances to the king in that parliament, and two among the statutes of the year seem to be founded upon no other authority.†

In the first session of Richard II., the prelates and clergy of both provinces are said to have presented their schedule of petitions which appear upon the roll, and three of which are the founda-

* p. 368. The word *they* is ambiguous; Whitelocke (on Parliamentary Writ, vol. ii. p. 346.) interprets it of the commons: I should rather suppose it to mean the clergy.

† 50 E. III. c. 4. and 5.

tion of statutes unassented to in all probability by the commons.* If the clergy of both provinces were actually present, as is here asserted, it mst of course have been as a house of parliament, and not of convocation. It rather seems, so far as we can trust to the phraseology of records, that the clergy sat also in a national assembly under the king's writ in the second year of the same king.† Upon other occasions during the same reign, where the representatives of the clergy are alluded to as a deliberative body, sitting at the same time with the parliament, it is impossible to ascertain its constitution; and indeed even from those already cited, we cannot draw any positive inference.‡ But whether in convocation or in par-

* Rot. Parl. vol. iii. p. 25. A nostre tres excellent seigneur le roy supplient humblement ses devotes orateurs, les prelats et la clergie de la province de Canterbirs et d' Everwyk. stat. 1 Richard II. c. 13, 14, 15. But see Hody, p. 425.; Atterbury, p. 339.

† p. 37.

‡ It might be argued, from a passage in the parliament-roll of 21 R. II., that the clergy of both provinces were not only present, but that they were accounted an essential part of parliament in temporal matters, which is contrary to the whole tenor of our laws. The commons are there said to have prayed, that "whereas many judgements and ordinances formerly made in parliament had been annulled, *because the estate of clergy had not been present thereat*, the prelates and clergy might make a proxy with sufficient power to consent in their name to all things done in this parliament. Whereupon the spiritual lords agreed to intrust their powers to Sir Thomas Percy, and gave him a procuration, commencing in the following words: "Nos Thomas Cantuar' et Robertus Ebor' archiepiscopi, ac prælati *et clerus utriusque provinciæ Cantuar' et Ebor' jure ecclesiarum nostrarum et temporalium earundem habentes jus interessendi in singulis parliamentis* domini nostri regis et regni Angliæ pro tempore celebrandis, necnon tractandi et expediendi in eisdem quantum ad singula in instanti parliamento pro statu et honore domini nostri regis, necnon regaliæ suæ, ac quiete, pace, et tranquillitate regni judicialiter justificandis, venerabili viro domino Thomæ de Percy militi, nostram plenarie committimus potestatem. It may be perceived by these expressions, and more unequivocally by the nature of the

liament, they certainly formed a legislative council in ecclesiastical matters, by the advice and consent of which alone, without that of the commons, (I can say nothing as to the lords,) Edward III. and even Richard II. enacted laws to bind the laity. I have mentioned in a different place a still more conspicuous instance of this assumed prerogative; namely, the memorable statute against heresy in the second of Henry IV.; which can hardly be deemed any thing else than an infringement of the rights of parliament, more clearly established at that time than at the accession of Richard II. Petitions of the commons relative to spiritual matters, however frequently proposed, in few or no instances obtained the king's assent so as to pass into statutes, unless approved by the convocation.* But, on the other hand, scarcely any temporal laws appear to have passed by the concurrence of the clergy. Two instances only, so far as I know, are on record: the parliament held in the 11th of Richard II. is annulled by that in the twenty-first of his reign, "with the assent of the lords spiritual and temporal, *and the proctors of the clergy*, and the commons;† and the

case, that it was the judicial power of parliament, which the spiritual lords delegated to their proxy. Many impeachments for capital offences were coming on, at which, by their canons, the bishops could not assist. But it can never be conceived, that the inferior clergy had any share in this high judicature. And, upon looking attentively at the words above printed in italics, it will be evident, that the spiritual lords holding by barony are the only persons designated; whatever may have been meant by the singular phrase, as applied to them, clerus utriusque provinciæ. Rot. Parl. vol. iii: p. 343.

* Atterbury, p. 346.

† 21 Rich. II. c. 12. Burnet's Hist. of Reformation (vol. ii. p. 47.)

statute entailing the crown on the children of Henry IV. is said to be enacted on the petition of the prelates, nobles, clergy, and commons.* Both these were stronger exertions of legislative authority than ordinary acts of parliament, and were very likely to be questioned in succeeding times.

Jurisdiction of the king's council.

The supreme judicature, which had been exercised by the king's court, was diverted, about the reign of John, into three channels; the tribunals of King's Bench, Common Pleas, and the Exchequer.† These became the regular fountains of justice, which soon almost absorbed the provincial jurisdictions of the sheriff and lord of manor. But the original institution, having been designed for ends of state, police and revenue, full as much as for the determination of private suits, still preserved the most eminent part of its authority. For the king's ordinary or privy council, which is the usual style from the reign of Edward I., seems to have been no other than the king's court (curia regis) of older times, being composed of the same persons, and having, in a principal degree, the same subjects of deliberation. It consisted of the chief ministers; as the chancellor, treasurer, lord steward, lord admiral, lord marshall, the keeper of the privy seal, the chamberlain, treasurer, and comptroller of the household, the chancellor of the

led me to this act, which I had overlooked.

* Rot. Parl. vol. iii. p. 582. Atterbury, p. 61.

† The ensuing sketch of the jurisdiction exercised by the king's council has been chiefly derived from Sir Matthew Hale's Treatise of the Jurisdiction of the Lords' House in Parliament, published by Mr. Hargrave.

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exchequer, the master of the wardrobe; and of the judges, king's serjeant, and attorney-general, the master of the rolls, and justices in eyre, who at that time were not the same as the judges at Westminster. When all these were called together, it was a full council; but where the business was of a more contracted nature, those only who were fittest to advise were summoned; the chancellor and judges, for matters of law; the officers of state for what concerned the revenue or household.

The business of this council, out of parliament, may be reduced to two heads; its deliberative office, as a council of advice, and its decisive power of jurisdiction. With respect to the first, it obviously comprehended all subjects of political deliberation, which were usually referred to it by the king; this being in fact the administration or governing council of state, the distinction of a cabinet being introduced in comparatively modern times. But there were likewise a vast number of petitions continually presented to the council, upon which they proceeded no farther than to sort, as it were, and forward them by indorsement to the proper courts, or advise the suitor what remedy he had to seek. Thus some petitions are answered; "this cannot be done without a new law;" some were turned over to the regular court, as the chancery or king's bench; some of greater moment were indorsed to be heard "before the great council;" some, concerning the king's interest, were

referred to the chancery, or select persons of the council.

The coercive authority exercised by this standing council of the king was far more important. It may be divided into acts legislative and judicial. As for the first, many ordinances were made in council; sometimes upon request of the commons in parliament, who felt themselves better qualified to state a grievance than a remedy; sometimes without any pretence, unless the usage of government, in the infancy of the constitution, may be thought to afford one. These were always of a temporary or partial nature, and were considered as regulations not sufficiently important to demand a new statute. Thus in the second year of Richard II., the council, after hearing read the statute-roll of an act recently passed conferring a criminal jurisdiction in certain cases upon justices of the peace, declared that the intention of parliament, though not clearly expressed therein, had been to extend that jurisdiction to certain other cases omitted, which accordingly they caused to be inserted in the commissions made to these justices under the great seal.* But they frequently so much exceeded what the growing spirit of public liberty would permit, that it gave rise to complaint in parliament. The commons petition, in 13 R. II., that "neither the chancellor nor the king's council, after the close of parliament, may make any ordinance against the common law, or

* Rot. Parl. vol. iii. p. 84.

the ancient customs of the land, or the statutes made heretofore or to be made in this parliament; but that the common law have its course for all the people, and no judgement be rendered without due legal process." The king answers, "Let it be done as has been usual heretofore, saving the prerogative; and if any one is aggrieved, let him shew it specially, and right shall be done him."* This unsatisfactory answer proves the arbitrary spirit in which Richard was determined to govern.

The judicial power of the council was in some instances founded upon particular acts of parliament, giving it power to hear and determine certain causes. Many petitions likewise were referred to it from parliament, especially where they were left unanswered by reason of a dissolution. But, independently of this delegated authority, it is certain that the king's council did anciently exercise, as well out of parliament as in it, a very great jurisdiction, both in causes criminal and civil. Some, however, have contended, that whatever they did in this respect was illegal, and an encroachment upon the common law, and Magna Charta. And, be the common law what it may, it seems an indisputable violation of the charter, in its most admirable and essential article, to drag men in questions of their freehold or liberty before a tribunal which neither granted them a trial by their peers, nor always respected the law of the land. Against this usurpation the

* Rot. Parl. vol. iii. p. 266.

patriots of those times never ceased to lift their voices. A statute of the fifth year of Edward III. provides that no man shall be attached, nor his property seized into the king's hands, against the form of the great charter, and the law of the land. In the twenty-fifth of the same king, it was enacted, that "none shall be taken by petition or suggestion to the king or his council, unless it be by indictment or presentment, or by writ original at the common law, nor shall be put out of his franchise or freehold, unless he be duly put to answer, and forejudged of the same by due course of law."* This was repeated in a short act of the twenty-eighth of his reign;† but both, in all probability, were treated with neglect; for another was passed some years afterwards, providing, that no man shall be put to answer without presentment before justices, or matter of record, or by due process and writ original according to the old law of the land. The answer to the petition whereon this statute is grounded, in the parliament-roll, expressly declares this to be an article of the great charter.‡ Nothing, however, would

* 25 E. III. stat. 5. c. 4. See the petition Rot. Parl. vol. ii. p. 228. which extends farther than the king's answer, or the statute. Probably this fifth statute of the 25th of Edward III. is the most extensively beneficial act in the whole body of our laws. It established certainty in treasons, regulated purveyance, prohibited arbitrary imprisonment and the determination of pleas of freehold before the council, took away the compulsory finding of men at arms and other troops, confirmed the reasonable aid of the king's tenants fixed by 3 E. I. and provided that the king's protection should not hinder civil process or execution.

† 28 E. III. c. 3.

‡ 42 E. III. c. 3. and Rot. Parl. vol. ii. p. 295. It is not surprizing that the king's council should have persisted in these transgressions of

prevail on the council to surrender so eminent a power, and, though usurped, yet of so long continuance. Cases of arbitrary imprisonment frequently occurred, and were remonstrated against by the commons. The right of every freeman in that cardinal point was as indubitable, legally speaking, as at this day; but the courts of law were afraid to exercise their remedial functions in defiance of so powerful a tribunal. After the accession of the Lancastrian family, these, like other grievances, became rather less frequent; but the commons remonstrate several times, even in the minority of Henry VI., against the council's interference in matters cognizable at common law.* In these later times, the civil jurisdiction of the council was principally exercised in conjunction with the chancery, and accordingly they are generally named together in the complaint. The chancellor having the great seal in his custody,

their lawful authority, when we find a similar jurisdiction usurped by the officers of inferior persons. Complaint is made in the 18th of Richard II., that men were compelled to answer before *the council of divers lords and ladies*, for their freeholds and other matters cognizable at common law, and a remedy for this abuse is given by petition in chancery. stat. 15 R. II. c. 12. This act is confirmed with a penalty on its contraveners the next year. 16 R. II. c. 2. The private gaols which some lords were permitted by law to possess, and for which there was always a provision in their castles, enabled them to render this oppressive jurisdiction effectual.

* Rot. Parl. 17 R. II. vol. iii. p. 319.; 4 H. IV. p. 507.; 1 H. VI. vol. iv. p. 189.; 3 H. VI. p. 292.; 8 H. VI. p. 343.; 10 H. VI. p. 403.; 15 H. VI. p. 501. To one of these, (10 H. VI.) "that none should be put to answer for his freehold in parliament, nor before any court or council where such things are not cognizable by the law of the land," the king gave a denial. As it was less usual to refuse promises of this kind, than to forget them afterwards, I do not understand the motive of this.

the council usually borrowed its process from his court. This was returnable into chancery even where the business was depending before the council. Nor were the two jurisdictions less intimately allied in their character; each being of an equitable nature; and equity, as then practised, being little else than innovation and encroachment on the course of law. This part, long since the most important, of the chancellor's judicial function, cannot be traced beyond the time of Richard II. when the practice of feoffments to uses having been introduced, without any legal remedy to secure the cestui que use, or usufructuary, against his feoffees, the court of chancery undertook to enforce this species of contract by process of its own.*

Such was the nature of the king's ordinary council in itself, as the organ of his executive sovereignty; and such the jurisdiction which it habitually exercised. But it is also to be considered in its relation to the parliament, during whose session, either singly, or in conjunction with the lords'

* Hale's Jurisdiction of Lords' House, p. 46. Coke, 2 Inst. p. 553. The last author places this a little later. There is a petition of the commons, in the roll of the 4th of Henry IV. p. 511. that whereas many grantees and feoffees in trust for their grantors and feoffers, alienate or charge the tenements granted, *in which case there is no remedy, unless one is ordered by parliament*, that the king and lords would provide a remedy. This petition is referred to the king's council to advise of a remedy against the ensuing parliament. It may perhaps be inferred from hence, that the writ of subpœna out of chancery had not yet been applied to protect the cestui que use. But it is equally possible, that the commons, being disinclined to what they would deem an illegal innovation, were endeavouring to reduce these fiduciary estates within the pale of the common law, as was afterwards done by the statute of uses.

house, it was particularly conspicuous. The great officers of state, whether peers or not, the judges, the king's serjeant, and attorney-general, were, from the earliest times, as the latter still continue to be, summoned by special writs to the upper house. But while the writ of a peer runs, ad tractandum nobiscum et cum cæteris prælatis, magnatibus et proceribus; that directed to one of the judges is only, ad tractandum nobiscum et cum cæteris de consilio nostro; and the seats of the latter are upon the woolsacks at one extremity of the house.

In the reigns of Edward I. and II., the council appear to have been the regular advisers of the king in passing laws, to which the houses of parliament had assented. The preambles of most statutes during this period express their concurrence. Thus, the statute Westm. I. is said to be the act of the king, by his council, and by the assent of archbishops, bishops, abbots, priors, earls, barons, and all the commonalty of the realm being thither summoned. The statute of escheators, 29 E. I. is said to be agreed by the council, enumerating their names, all whom appear to be judges or public officers. Still more striking conclusions are to be drawn from the petitions addressed to the council by both houses of parliament. In the 8th of Edward II. there are four petitions from the commons to the king and his council, one from the lords alone, and one in which both appear to have joined. Later parliaments of the same reign present us with several more instances of the like na-

ture. Thus in 18 E. II. a petition begins: "To our lord the king, and to his council, the archbishops, bishops, prelates, earls, barons, and others of the commonalty of England shew," &c.*

But from the beginning of Edward III.'s reign, it seems that the council and the lords' house in parliament were often blended together into one assembly. This was denominated the great council, being the lords spiritual and temporal, with the king's ordinary council annexed to them, as a council within a council. And even in much earlier times, the lords, as hereditary counsellors, were, either whenever they thought fit to attend, or on special summonses by the king, (it is hard to say which,) assistant members of this council, both for advice and for jurisdiction. This double capacity of the peerage, as members of the parliament or legislative assembly, and of the deliberative and judicial council, throws a very great obscurity over the subject. However, we find that private petitions for redress were, even under Edward I., presented to the lords in parliament, as much as to the ordinary council. The parliament was considered a high court of justice, where relief was to be given in cases where the course of law was obstructed, as well as where it was defective. Hence the intermission of parliaments was looked upon as a delay of justice, and their annual meeting is demanded upon that ground. "The king," says Fleta, "has

* Rot. Parl. vol. i. p. 416.

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his court in his council, in his parliaments, in the presence of bishops, earls, barons, lords, and other wise men, where the doubtful cases of judgements are resolved, and new remedies are provided against new injuries, and justice is rendered to every man according to his desert."* In the third year of Edward II., receivers of petitions began to be appointed at the opening of every parliament, who usually transmitted them to the ordinary, but in some instances to the great council. These receivers were commonly three for England, and three for Ireland, Wales, Gascony, and other foreign dominions. There were likewise two corresponding classes of auditors or triers of petitions. These consisted partly of bishops or peers, partly of judges and other members of the council; and they seem to have been instituted in order to disburthen the council, by giving answers to some petitions. But about the middle of Edward III.'s time, they ceased to act juridically in this respect, and confined themselves to transmitting petitions to the lords or the council.

The Great Council, according to the definition we have given, consisting of the lords spiritual and temporal, in conjunction with the ordinary council, or, in other words, of all who were severally summoned to parliament, exercised a considerable jurisdiction, as well civil as criminal. In this jurisdiction, it is the opinion of Sir M. Hale, that the

* Rot. Parl. 1. ii. c. 2.

council, though not peers, had right of suffrage; an opinion very probable, when we recollect that the council, by themselves, both in and out of parliament, possessed, in fact, a judicial authority little inferior; and that the king's delegated sovereignty in the administration of justice, rather than any intrinsic right of the peerage, is the foundation on which the judicature of the lords must be supported. But in the time of Edward III. or Richard II., the lords, by their ascendancy, threw the judges and rest of the council into shade, and took the decisive jurisdiction entirely to themselves, making use of their former colleagues but as assistants and advisers, as they still continue to be held in all the judicial proceedings of that house.

Those statutes which restrain the king's ordinary council from disturbing men in their freehold rights, or questioning them for misdemeanours, have an equal application to the lords' house in parliament, though we do not frequently meet with complaints of the encroachments made by that assembly. There was, however, one class of cases tacitly excluded from the operation of those acts, in which the coercive jurisdiction of this high tribunal had great convenience; namely, where the ordinary course of justice was so much obstructed by the defending party, through riots, combinations of maintenance, or over-awing influence, that no inferior court would find its process obeyed. Those ages, disfigured, in their quietest season, by rapine and oppression, afforded no small number of cases that called for this interposition of the crown and

parliament.* They do not occur so frequently, however, in the rolls of parliament after the reign of Henry IV.; whether this be attributed to the gradual course of civilization, and to the comparative prosperity which England enjoyed under the line of Lancaster, or rather to the discontinuance of the lords' jurisdiction. Another indubitable branch of this jurisdiction was in writs of error; but it may be observed, that their determination was very frequently left to a select committee of peers and counsellors. These too cease almost entirely with Henry IV.; and were scarcely revived till the accession of James I.

Some instances occur in the reign of Edward III., where records have been brought into parliament, and annulled with assent of the commons as well as the rest of the legislature.† But these were attainders of treason, which it seemed gracious and solemn to reverse in the most authentic manner. Certainly the commons had neither by

* This is remarkably expressed in one of the articles agreed in parliament 8 II. VI. for the regulation of the council. "Item, that alle the billes that comprehend matters terminable atte the common lawe, shall be remitted ther to be determined; but if so be, that the discresion of the counseill fele to grete myght on that o syde, and unmyght on that other, or elles other cause resonable yat shal move him." Rot. Parl. vol. iv. p. 343.

† The judgement against Mortimer was reversed at the suit of his son, 28 E. III. because he had not been put on his trial. The peers had adjudged him to death in his absence, upon common notoriety of his guilt. 4 E. III. p. 53. In the same session of 28 E. III. the earl of Arundel's attainder was also reversed, which had passed in 1 E. III., when Mortimer was at the height of his power. These precedents taken together seem to have resulted from no partiality, but a true sense of justice in respect of treasons, animated by the recent statute. Rot. Parl. vol. ii. p. 256.

the nature of our constitution, nor the practice of parliament, any right of intermeddling in judicature; save where something was required beyond the existing law, or where, as in the statute of treasons, an authority of that kind was particularly reserved to both houses. This is fully acknowledged by themselves in the first year of Henry IV.* But their influence upon the balance of government became so commanding in a few years afterwards, that they contrived, as has been mentioned already, to have petitions directed to them, rather than to the lords or council, and to transmit them either with a tacit approbation, or in the form of acts, to the upper house. Perhaps this encroachment of the commons may have contributed to the disuse of the lords' jurisdiction, who would rather relinquish their ancient and honourable but laborious function, than share it with such bold usurpers.

General character of the government in these ages.

Although the restraining hand of parliament was continually growing more effectual, and the notions of legal right acquiring more precision, from the time of Magna Charta to the civil wars under Henry VI., we may justly say, that the general tone of administration was not a little arbitrary. The whole fabric of English liberty rose step by step, through much toil, and many sacrifices; each generation adding some new security to the work, and trusting that posterity would perfect the labour as well as enjoy the reward.

* Rot. Parl. vol. iii. p. 427.

A time perhaps was even then foreseen, in the visions of generous hope, by the brave knights of parliament, and by the sober sages of justice, when the proudest ministers of the crown should recoil from those barriers, which were then daily pushed aside with impunity.

There is a material distinction to be taken between the exercise of the king's undeniable prerogative, however repugnant to our improved principles of freedom, and the abuse or extension of it to oppressive purposes. For we cannot fairly consider as part of our ancient constitution, what the parliament was perpetually remonstrating against, and the statute-book is full of enactments to repress. Doubtless the continual acquiescence of a nation in arbitrary government may ultimately destroy all privileges of positive institution, and leave them to recover, by such means as opportunity shall offer, the natural and imprescriptible rights for which human societies were established. And this may perhaps be the case at present with many European kingdoms. But it would be necessary to shut our eyes with deliberate prejudice against the whole tenor of the most unquestionable authorities, against the petitions of the commons, the acts of the legislature, the testimony of historians and lawyers, before we could assert that England acquiesced in those abuses and oppressions, which it must be confessed she was unable fully to prevent.

The word prerogative is of a peculiar import, and scarcely understood by those who come from

the studies of political philosophy. We cannot define it by any theory of executive functions. All these may be comprehended in it, but also a great deal more. It is best perhaps to be understood by its derivation; and has been said to be that law in case of the king, which is law in no case of the subject.* Of the higher and more sovereign prerogatives, I shall here say nothing; they result from the nature of a monarchy, and have nothing very peculiar in their character. But the smaller rights of the crown shew better the original lineaments of our constitution. It is said commonly enough, that all prerogatives are given for the subject's good. I must confess that no part of this assertion corresponds with my view of the subject. It neither appears to me that these prerogatives were ever given, nor that they necessarily redound to the subject's good. Prerogative, in its old sense, might be defined an advantage obtained by the crown over the subject, in cases where their interests came into competition, by reason of its greater strength. This sprang from the nature of the Norman government, which rather resembled a scramble of wild beasts, where the strongest takes the best share, than a system founded upon principles of common utility. And, modified as the exercise of most prerogatives has been by the more liberal tone which now pervades our course of government, whoever attends to the common practice of courts of justice, and still

* Blackstone's Comment. from Finch, vol. i. chap. 7.

more whoever consults the law-books, will not only be astonished at their extent and multiplicity, but very frequently at their injustice and severity.

Purveyance.

The real prerogatives that might formerly be exerted were sometimes of so injurious a nature, that we can hardly separate them from their abuse. A striking instance is that of purveyance, which will at once illustrate the definition above given of a prerogative, the limits within which it was to be exercised, and its tendency to transgress them. This was a right of purchasing whatever was necessary for the king's household, at a fair price, in preference to every competitor, and without the consent of the owner. By the same prerogative, carriages and horses were impressed for the king's journeys, and lodgings provided for his attendants. This was defended on a pretext of necessity, or at least of great convenience to the sovereign, and was both of high antiquity and universal practice throughout Europe. But the royal purveyors had the utmost temptation, and doubtless no small store of precedents, to stretch this power beyond its legal boundary; and not only to fix their own price too low, but to seize what they wanted without any payment at all, or with tallies which were carried in vain to an empty exchequer.* This gave rise to a number

* Letters are directed to all the sheriffs, 2 Edw. I. injoining them to send up a certain number of beeves, sheep, capons, &c. for the king's coronation. Rymer, vol. ii. p. 21. By the statute 21 Edw. III. c. 12. goods taken by the purveyors were to be paid for on the spot, if under twenty shillings value, or within three months time, if above that value. But it is not to be imagined that this law was or could be observed.

Edward III., impelled by the

of petitions from the commons, upon which statutes were often framed; but the evil was almost incurable in its nature, and never ceased till that prerogative was itself abolished. Purveyance, as I have already said, may serve to distinguish the defects from the abuses of our constitution. It was a reproach to the law, that men should be compelled to sell their goods without their consent; it was a reproach to the administration, that they were deprived of them without payment.

The right of purchasing men's goods for the use of the king was extended by a sort of analogy to their labour. Thus Edward III. announces to all sheriffs, that William of Walsingham had a commission to collect as many painters as might suffice for "our works in St. Stephen's chapel, Westminster, to be at our wages as long as shall be necessary;" and to arrest and keep in prison all who should refuse or be refractory; and enjoins them to lend their assistance.* Windsor Castle owes its massive magnificence to labourers impressed from every part of the kingdom. There is even a commission from Edward IV. to take as many workmen in gold as were wanting, and employ them at the king's cost upon the trappings of himself and his household.†

exigencies of his French war, went still greater lengths, and seized large quantities of wool, which he sold beyond sea, as well as provisions for the supply of his army. In both cases the proprietors had tallies, or other securities; but their despair of obtaining payment gave rise, in 1338, to an insurrection. There is a singular apologetical letter of Edward to the archbishops on this occasion. Rymer, t. v. p. 10. See also p. 73. and Knyghton, col. 2570.

* Rymer, t. vi. p. 417.

† Idem, t. xi. p. 852.

Abuses of feudal rights.

Another class of abuses intimately connected with unquestionable, though oppressive, rights of the crown, originated in the feudal tenure which bound all the lands of the kingdom. The king had indisputably a right to the wardship of his tenants in chivalry, and to the escheats or forfeitures of persons dying without heirs or attainted for treason. But his officers, under pretence of wardship, took possession of lands not held immediately of the crown, claimed escheats where a right heir existed, and seized estates as forfeited, which were protected by the statute of entails. The real owner had no remedy against this dispossession, but to prefer his petition of right in chancery, or, which was probably more effectual, to procure a remonstrance of the house of commons in his favour. Even where justice was finally rendered to him, he had no recompense for his damages; and the escheators were not less likely to repeat an iniquity by which they could not personally suffer.

Forest laws.

The charter of the forests, granted by Henry III. along with Magna Charta,* had been designed to crush the flagitious system of oppression, which prevailed in those favourite haunts of the Norman kings. They had still, however, their peculiar jurisdiction, though, from the time

* Matthew Paris asserts, that John granted a separate forest-charter, and supports his position by inserting that of Henry III. at full length. In fact, the clauses relating to the forests were incorporated with the great charter of John. Such an error as this shews the precariousness of historical testimony, even where it seems to be best grounded.

at least of Edward III., subject in some measure to the controul of the king's bench.* The foresters, I suppose, might find a compensation for their want of the common law, in that easy and licentious way of life which they affected; but the neighbouring cultivators frequently suffered from the king's officers, who attempted to recover those adjacent lands, or, as they were called, purlieus, which had been disafforested by the charter, and protected by frequent perambulations. Many petitions of the commons relate to this grievance.

Jurisdiction of Constable and Marshal.

The constable and marshal of England possessed a jurisdiction, the proper limits whereof were sufficiently narrow, as it seems to have extended only to appeals of treason committed beyond sea, which were determined by combat, and to military offences within the realm. But these high officers frequently took upon them to inquire of treasons and felonies cognizable at common law, and even of civil contracts or trespasses. This is no bad illustration of the state in which our constitution stood under the Plantagenets. No colour of right or of supreme prerogative was set up to justify a procedure so manifestly repugnant to the great charter. For all remonstrances

* Coke, 4th Inst. p. 294. The forest domain of the king, says the author of the Dialogue on the Exchequer under Henry II., is governed by its own laws, not founded on the common law of the land, but the voluntary enactment of princes; so that whatever is done by that law is reckoned not legal in itself, but legal according to forest law. p. 29. non justum absolutè, sed justum secundùm legem forestæ dicatur. I believe my translation of *justum* is right; for he is not writing satirically.

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against these encroachments, the king gave promises in return; and a statute was enacted, in the 13th of Richard II., declaring the bounds of the constable and marshal's jurisdiction.* It could not be denied, therefore, that all infringements of these acknowledged limits were illegal, even if they had a hundred fold more actual precedents in their favour than can be supposed. But the abuse by no means ceased after the passing of this statute, as several subsequent petitions, that it might be better regarded, will evince. One, as it contains a special instance, I shall insert. It is of the fifth year of Henry IV. "On several supplications and petitions made by the commons in parliament to our lord the king for Bennet Wilman, who is accused by certain of his ill-wishers, and detained in prison, and put to answer before the constable and marshal, against the statutes and the common law of England, our said lord the king, by the advice and assent of the lords in parliament, granted that the said Bennet should be treated according to the statutes and common law of England, notwithstanding any commission to the contrary, or accusation against him made before the constable and marshal." And a writ was sent to the justices of the King's Bench with a copy of this article from the roll of parliament, directing them to proceed as they shall see fit according to the laws and customs of England.†

It must appear remarkable, that, in a case so

* 13 R. II. c. 2.

† Rot. Parl. vol. iii. p. 530.

manifestly within their competence, the court of king's bench should not have issued a writ of habeas corpus, without waiting for what may be considered as a particular act of parliament. But it is a natural effect of an arbitrary administration of government, to intimidate courts of justice.* A negative argument, founded upon the want of legal precedents, is certainly not conclusive, when it relates to a distant period, of which all the precedents have not been noted; yet it must strike us, that in the learned and zealous arguments of Sir Robert Cotton, Mr. Selden and others, against arbitrary imprisonment, in the great case of the habeas corpus, though the statute law is full of authorities in their favour, we find no instance adduced, earlier than the reign of Henry VII., where the king's bench has released, or even bailed, persons committed by the council, or the constable, though it is unquestionable that such committals were both frequent and illegal.†

* The apprehension of this compliant spirit in the ministers of justice led to an excellent act in 2 E. III. c. 8. that the judges shall not omit to do right for any command under the great or privy seal. And the conduct of Richard II., who sought absolute power by corrupting or intimidating them, produced another statute in the eleventh year of his reign, (c. 10.) providing that neither letters of the king's signet, nor of the privy seal should from thenceforth be sent in disturbance of the law. An ordinance of Charles V., king of France, in 1369, directs the parliament of Paris to pay no regard to any letters under his seal suspending the course of legal procedure, but to consider them as surreptitiously obtained. Villaret, t. x. p. 175. This ordinance, which was sedulously observed, tended very much to confirm the independence and integrity of that tribunal.

† Cotton's Posthuma, p. 221. Howell's State Trials, vol. iii. p. 1. Hume quotes a grant of the office of constable to the earl of Rivers in 7 Edw. IV., and infers, unwarrantably enough, that "its authority was in direct contradiction to Magna Charta; and it is evident that no regular liberty could subsist with it. It involved a full dic-

If I have faithfully represented thus far the history of our constitution, its essential character will appear to be a monarchy greatly limited by law, though retaining much power that was ill calculated to promote the public good, and swerving continually into an irregular course, which there was no restraint adequate to correct. But of all the notions that have been advanced as to the theory of this constitution, the least consonant to law and history is that which represents the king as merely an hereditary executive magistrate, the first officer of the state. What advantages might result from such a form of government, this is not the place to discuss. But it certainly was not the ancient constitution of England. There was nothing in this, absolutely nothing, of a republican appearance. All seemed to grow out of the monarchy, and was referred to its advantage and honour. The voice of supplication, even in the stoutest disposition of the commons, was always humble; the prerogative was always named in large and pompous expressions. Still

tatorial power, continually subsisting in the state." Hist. of England, c. 22. But by the very words of this patent, the jurisdiction given was only over such causes quæ in curiâ constabularii Angliæ ab antiquo, viz. tempore dicti Gulielmi conquæstoris, seu aliquo tempore citra, tractari, audiri, examinari aut decidi consueverunt aut *jure debuerant aut debent*. These are expressed, though not very perspicuously, in the statute 13 Ric. II. c. 2. that declares the constable's jurisdiction. And the chief criminal matter reserved by law to the court of this officer was treason committed out of the kingdom. In violent and revolutionary seasons, such as the commencement of Edward IV.'s reign, some persons were tried by martial law before the constable. But, in general, the exercise of criminal justice by this tribunal, though one of the abuses of the times, cannot be said to warrant the strong language adopted by Hume.

more naturally may we expect to find in the law-books even an obsequious deference to power; from judges who scarcely ventured to consider it as their duty to defend the subject's freedom, and who beheld the gigantic image of prerogative, in the full play of its hundred arms, constantly before their eyes. Through this monarchical tone, which certainly pervades all our legal authorities, a writer like Hume, accustomed to philosophical liberality as to the principles of government, and to the democratical language which the modern aspect of the constitution and the liberty of printing have produced, fell hastily into the error of believing that all limitations of royal power during the fourteenth and fifteenth centuries were as much unsettled in law and in public opinion, as they were liable to be violated by force. Though a contrary position has been sufficiently demonstrated, I conceive, by the series of parliamentary proceedings which I have already produced, yet there is a passage in Sir John Fortescue's treatise De Laudibus Legum Angliæ, so explicit and weighty, that no writer on the English constitution can be excused from inserting it. This eminent person, having been chief justice of the king's bench under Henry VI., was governor to the young prince of Wales during his retreat in France, and received at his hands the office of chancellor. It must never be forgotten, that, in a treatise purposely composed for the instruction of one who hoped to reign over England, the limitations of government are enforced as strenuously

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Sir John Fortescue's doctrine as to the English Constitution.

by Fortescue, as some succeeding lawyers have inculcated the doctrines of arbitrary prerogative.

"A king of England cannot at his pleasure make any alterations in the law of the land, for the nature of his government is not only regal, but political. Had it been merely regal, he would have a power to make what innovations and alterations he pleased in the laws of the kingdom, impose tallages and other hardships upon the people whether they would or no, without their consent, which sort of government the civil laws point out, when they declare Quod principi placuit, legis habet vigorem. But it is much otherwise with a king whose government is political, because he can neither make any alteration or change in the laws of the realm without the consent of the subjects, nor burthen them against their wills with strange impositions, so that a people governed by such laws as are made by their own consent and approbation enjoy their properties securely, and without the hazard of being deprived of them, either by the king or any other. The same things may be effected under an absolute prince, provided he do not degenerate into the tyrant. Of such a prince, Aristotle, in the third of his Politics, says, 'It is better for a city to be governed by a good man, than by good laws.' But because it does not always happen, that the person presiding over a people is so qualified, St. Thomas, in the book which he writ to the king of Cyprus, De Regimine Principum, wishes, that a kingdom could be so instituted, as that the king

might not be at liberty to tyrannize over his people; which only comes to pass in the present case; that is, when the sovereign power is restrained by political laws. Rejoice, therefore, my good prince, that such is the law of the kingdom to which you are to inherit, because it will afford, both to yourself and subjects, the greatest security and satisfaction."*

The two great divisions of civil rule, the absolute, or regal, as he calls it, and the political, Fortescue proceeds to deduce from the several originals of conquest and compact. Concerning the latter, he declares emphatically a truth not always palatable to princes, that such governments were instituted by the people, and for the people's good; quoting St. Augustin for a similar definition of a political society. "As the head of a body natural cannot change its nerves and sinews, cannot deny to the several parts their proper energy, their due proportion and aliment of blood; neither can a king, who is the head of the body politic, change the laws thereof, nor take from the people what is theirs, by right, against their consent. Thus you have, sir, the formal institution of every political kingdom; from whence you may guess at the power which a king may exercise with respect to the laws and the subject. For he is appointed to protect his subjects in their lives, properties and laws; for this very end and purpose he has the delegation of power from the people; and he has

* Fortescue, De Laudibus Legum Angliæ, c. 9.

no just claim to any other power but this. Wherefore, to give a brief answer to that question of your's, concerning the different powers which kings claim over their subjects, I am firmly of opinion that it arises solely from the different natures of their original institution, as you may easily collect from what has been said. So the kingdom of England had its original from Brute and the Trojans, who attended him from Italy and Greece, and became a mixt kind of government, compounded of the regal and political."*

Erroneous views taken by Hume.

It would occupy too much space to quote every other passage of the same nature in this treatise of Fortescue, and in that intitled, Of the Difference between an Absolute and Limited Monarchy, which, so far as these points are concerned, is nearly a translation from the former.† But these, corroborated as they are by the statute-book and by the rolls of parliament, are surely conclusive against the notions which pervade Mr. Hume's History. I have already remarked that a sense of the glaring prejudice by which some whig writers had been actuated, in representing the English constitution from the earliest times as nearly arrived at its present perfection, conspired with certain prepossessions of his own to lead this emi-

* c. 13.

† The latter treatise having been written under Edward IV., whom Fortescue, as a restored Lancastrian, would be anxious not to offend, and whom in fact he took some pains to conciliate both in this and other writings, it is evident, that the principles of limited monarchy were as fully recognized in his reign, whatever particular acts of violence might occur, as they had been under the Lancastrian princes.

nent historian into an equally erroneous system on the opposite side. And as he traced the stream backwards, and came last to the times of the Plantagenet dynasty, with opinions already biassed, and even pledged to the world in his volumes of earlier publication, he was prone to seize hold of, and even exaggerate, every circumstance that indicated immature civilization, and law perverted or infringed.* To this his ignorance of English jurisprudence, which certainly in some measure disqualified him from writing our history, did not a little contribute; misrepresentations frequently occurring in his work, which a moderate acquaintance with the law of the land would have prevented.

Instances of illegal condemnation rare.

It is an honourable circumstance to England, that the history of no other country presents so few instances of illegal condemnations upon political charges. The judicial torture was hardly known, and never recognized by law.† The sen-

* The following is one example of these prejudices: In the 9th of Richard II. a tax on wool granted till the ensuing feast of St. John Baptist was to be intermitted from thence to that of St. Peter, and then to recommence; that it might not be claimed as a right. Rot. Parl. vol. iii. p. 214. Mr. Hume has noticed this provision, as "shewing an accuracy beyond what was to be expected in those *rude* times." In this epithet we see the foundation of his mistakes. The age of Richard II. might perhaps be called rude in some respects. But assuredly in prudent and circumspect perception of consequences, and an accurate use of language, there could be no reason why it should be deemed inferior to our own. If Mr. Hume had ever deigned to glance at the legal decisions reported in the Year-books of those times, he would have been surprized, not only at the utmost *accuracy*, but at a subtle refinement in verbal logic, which none of his own metaphysical treatises could surpass.

† During the famous process against the knights templars in the reign of Edward II., the archbishop of York, having taken the examina-

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tence in capital crimes, fixed unalterably by custom, allowed nothing to vindictiveness and indignation. There hardly occurs an example of any one being notoriously put to death without form of trial, except in moments of flagrant civil war. If the rights of juries were sometimes evaded by irregular jurisdictions, they were at least held sacred by the courts of law; and through all the vicissitudes of civil liberty, no one ever questioned the primary right of every freeman, handed down from his Saxon forefathers, to the trial by his peers. A just regard for public safety prescribes the necessity of severe penalties against rebellion and conspiracy; but the interpretation of these offences, when entrusted to sovereigns and their counsellors, has been the most tremendous instrument of despotic power. In rude ages, even though a general spirit of political liberty may prevail, the legal character of treason will commonly be undefined; nor is it the disposition of lawyers to give greater accuracy to this part of criminal jurisprudence. The nature of treason appears to have been subject to much uncertainty in England before the statute of Edward III. If that memorable law did not give all possible preci-

tion of certain templars in his province, felt some doubts which he propounded to several monasteries and divines. Most of these relate to the main subject. But one question, fitter indeed for lawyers than theologians, was, whereas many would not confess without torture, whether he might make use of this means, *licet hoc in regno Angliæ nunquam visum fuerit vel auditum?* Et si torquendi sunt, utrum per clericos vel laicos? Et dato, quod *nullus omninò tortor inveniri valeat* in Angliâ, utrum pro tortoribus mittendum sit ad partes transmarinas? Walt. Hemingford, p. 256.

sion to the offence, which we must certainly allow, it prevented at least those stretches of vindictive tyranny which disgrace the annals of other countries. The praise, however, must be understood as comparative. Some cases of harsh if not illegal convictions could hardly fail to occur, in times of violence and during changes of the reigning family. Perhaps the circumstances have now and then been aggravated by historians. Nothing could be more illegal than the conviction of the earl of Cambridge and Lord Scrop in 1415, if it be true, according to Carte and Hume, that they were not heard in their defence. But, whether this is to be absolutely inferred from the record* is perhaps open to question. There seems at least to have been no sufficient motive for such an irregularity; their participation in a treasonable conspiracy being manifest from their own confession. The proceedings against Sir John Mortimer in the 2d. of Henry VI.† are called by Hume highly irregular and illegal. They were, however, by act of attainder, which cannot well be styled illegal. Nor are they to be considered as severe. Mortimer had broken out of the Tower, where he was confined on a charge of treason. This was a capital felony at common law; and the chief irregularity seems to have consisted in having recourse to parliament in order to attaint him of treason, when he had already forfeited his life by another crime.

I would not willingly attribute to the preva-

* Rot. Parl. vol. iv. p. 65. † Id. p. 202.

lence of Tory dispositions what may be explained otherwise, the progress which Mr. Hume's historical theory as to our constitution has been gradually making since its publication. The tide of opinion, which since the Revolution, and indeed since the reign of James I., had been flowing so strongly in favour of the antiquity of our liberties, now seems, among the higher and more literary classes, to set pretty decidedly the other way. Though we may still sometimes hear a demagogue chattering about the witteragemot, it is far more usual to find sensible and liberal men who look on Magna Charta itself as the result of an uninteresting squabble between the king and his barons. Acts of force and injustice, which strike the cursory inquirer, especially if he derives his knowledge from modern compilations, more than the average tenor of events, are selected and displayed as fair samples of the law and of its administration. We are deceived by the comparatively perfect state of our present liberties, and forget that our superior security is far less owing to positive law, than to the controul which is exercised over government by public opinion through the general use of printing, and to the diffusion of liberal principles in policy through the same means. Thus, disgusted at a contrast which it was hardly candid to institute, we turn away from the records that attest the real, though imperfect, freedom of our ancestors; and are willing to be persuaded, that the whole scheme of English polity, till the commons took on themselves to

assert their natural rights against James I., was at best but a mockery of popular privileges, hardly recognized in theory, and never regarded in effect.

This system, when stripped of those slavish inferences that Brady and Carte attempted to build upon it, admits perhaps of no essential objection but its want of historical truth. God forbid that our right to a just and free government should be tried by a jury of antiquaries! Yet it is a generous pride that intertwines the consciousness of hereditary freedom with the memory of our ancestors; and no trifling argument against those who seem indifferent in its cause, that the character of the bravest and most virtuous among nations has not depended upon the accidents of race or climate, but been gradually wrought by the plastic influence of civil rights, transmitted as a prescriptive inheritance through a long course of generations.

Causes tending to form the constitution.

By what means the English acquired and preserved this political liberty, which, even in the fifteenth century, was the admiration of judicious foreigners,* is a very rational and interesting inquiry. Their own serious and steady attachment to the laws must always be reckoned among the principal causes of this blessing. The civil equality of all freemen below the rank of peerage, and the subjection of peers themselves to the impartial arm of justice, and to a just share in contribution to public burthens, advantages unknown

* Philip de Comines takes several opportunities of testifying his esteem for the English government. See particularly l. iv. c. i. and l. v. c. xix.

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to other countries, tended to identify the interests, and to assimilate the feelings of the aristocracy with those of the people; classes whose dissension and jealousy has been in many instances the surest hope of sovereigns aiming at arbitrary power. This freedom from the oppressive superiority of a privileged order was peculiar to England. In many kingdoms the royal prerogative was at least equally limited. The statutes of Aragon are more full of remedial provisions. The right of opposing a tyrannical government by arms was more frequently asserted in Castile. But no where else did the people possess both by law; and I think upon the whole, in effect, so much security for their personal freedom and property. Accordingly, the middling ranks flourished remarkably, not only in commercial towns, but among the cultivators of the soil. "There is scarce a small village," says Sir J. Fortescue, "in which you may not find a knight, an esquire, or some substantial householder (paterfamilias), commonly called a frankleyn,* possessed of considerable estate; besides others who are called freeholders, and many yeomen of estates sufficient to make a

* By a frankleyn in this place we are to understand what we call a country squire, like the frankleyn of Chaucer; for the word esquire in Fortescue's time was only used in its limited sense, for the sons of peers and knights, or such as had obtained the title by creation or some other legal means.

The mention of Chaucer leads me to add, that the prologue to his Canterbury Tales is of itself a continual testimony to the plenteous and comfortable situation of the middle ranks in England, as well as to that fearless independence and frequent originality of character amongst them, which liberty and competence have conspired to produce.

substantial jury." I would, however, point out more particularly two causes which had a very leading efficacy in the gradual development of our constitution; first, the schemes of continental ambition in which our government was long engaged; secondly, the manner in which feudal principles of insubordination and resistance were modified by the prerogatives of the early Norman kings.

1. At the epoch when William the Conqueror ascended the throne, hardly any other power was possessed by the king of France than what he inherited from the great fiefs of the Capetian family. War with such a potentate was not exceedingly to be dreaded, and William, besides his immense revenue, could employ the feudal services of his vassals, which were extended by him to continental expeditions. These circumstances were not essentially changed till after the loss of Normandy; for the acquisitions of Henry II. kept him fully on an equality with the French crown, and the dilapidation which had taken place in the royal demesnes was compensated by several arbitrary resources that filled the exchequer of these monarchs. But in the reigns of John and Henry III., the position of England, or rather of its sovereign with respect to France, underwent a very disadvantageous change. The loss of Normandy severed the connexion between the English nobility and the continent; they had no longer estates to defend, and took not sufficient interest in the concerns of Guienne, to fight for that pro-

vince at their own cost. Their feudal service was now commuted for an escuage, which fell very short of the expenses incurred in a protracted campaign. Tallages of royal towns and demesne lands, extortion of money from the Jews, every feudal abuse and oppression were tried in vain to replenish the treasury, which the defence of Eleanor's inheritance against the increased energy of France was constantly exhausting. Even in the most arbitrary reigns, a general tax upon landholders, in any cases but those prescribed by the feudal law, had not been ventured; and the standing bulwark of Magna Charta, as well as the feebleness and unpopularity of Henry III., made it more dangerous to violate an established principle. Subsidies were therefore constantly required; but for these it was necessary for the king to meet parliament, to hear their complaints, and, if he could not elude, to acquiesce in their petitions. These necessities came still more urgently upon Edward I., whose ambitious spirit could not patiently endure the encroachments of Philip the Fair, a rival not less ambitious, but certainly less distinguished by personal prowess than himself. What advantage the friends of liberty reaped from this ardour for continental warfare is strongly seen in the circumstances attending the Confirmation of the Charters.

But after this statute had rendered all tallages without consent of parliament illegal, though it did not for some time prevent their being occasionally imposed, it was still more difficult to

carry on a war with France or Scotland, to keep on foot naval armaments, or even to preserve the courtly magnificence which that age of chivalry affected, without perpetual recurrence to the house of commons. Edward III. very little consulted the interests of his prerogative when he stretched forth his hand to seize the phantom of a crown in France. It compelled him to assemble parliament almost annually, and often to hold more than one session within the year. Here the representatives of England learned the habit of remonstrance and conditional supply; and though, in the meridian of Edward's age and vigour, they often failed of immediate redress, yet they gradually swelled the statute-roll with provisions to secure their country's freedom; and acquiring self-confidence by mutual intercourse, and sense of the public opinion, they became able, before the end of Edward's reign, and still more in that of his grandson, to controul, prevent, and punish the abuses of administration. Of all these proud and sovereign privileges, the right of refusing supply was the key-stone. But for the long wars in which our kings were involved, at first by their possession of Guienne, and afterwards by their pretensions upon the crown of France, it would have been easy to suppress remonstrances by avoiding to assemble parliament. For it must be confessed, that an authority was given to the king's proclamations, and to ordinances of the council, which differed but little from legislative power, and would very

soon have been interrupted by complaisant courts of justice to give them the full extent of statutes.

It is common indeed to assert, that the liberties of England were bought with the blood of our forefathers. This is a very magnanimous boast; and in some degree is consonant enough to the truth. But it is far more generally accurate to say that they were purchased by money. A great proportion of our best laws, including Magna Charter itself, as it now stands confirmed by Henry III., were, in the most literal sense, obtained by a pecuniary bargain with the crown. In many parliaments of Edward III. and Richard II. this sale of redress is chaffered for as distinctly, and with as little apparent sense of disgrace, as the most legitimate business between two merchants would be transacted. So little was there of voluntary benevolence in what the loyal courtesy of our constitution styles concessions from the throne; and so little title have these sovereigns, though we cannot refuse our admiration to the generous virtues of Edward III. and Henry V., to claim the gratitude of posterity as the benefactors of their people!

2. The relation established between a lord and his vassal by the feudal tenure, far from containing principles of any servile and implicit obedience, permitted the compact to be dissolved in case of its violation by either party. This extended as much to the sovereign as to inferior lords; the authority of the former in France,

where the system most flourished, being for several ages rather feudal than political. If a vassal was aggrieved, and if justice was denied him, he sent a defiance, that is, a renunciation of fealty to the king, and was entitled to enforce redress at the point of his sword. It then became a contest of strength as between two independent potentates, and was terminated by treaty, advantageous or otherwise, according to the fortune of war. This privilege, suited enough to the situation of France, the great peers of which did not originally intend to admit more than a nominal supremacy in the house of Capet, was evidently less compatible with the regular monarchy of England. The stern natures of William the Conqueror and his successors kept in controul the mutinous spirit of their nobles, and reaped the profit of feudal tenures, without submitting to their reciprocal obligations. They counteracted, if I may so say, the centrifugal force of that system by the application of a stronger power; by preserving order, administering justice, checking the growth of baronial influence and riches, with habitual activity, vigilance and severity. Still, however, there remained the original principle, that allegiance depended conditionally upon good treatment, and that an appeal might be lawfully made to arms against an oppressive government. Nor was this, we may be sure, left for extreme necessity, or thought to require a long enduring forbearance. In modern times, a king compelled by his subjects' swords to abandon any preten-

sion would be supposed to have ceased to reign; and the express recognition of such a right as that of insurrection has been justly deemed inconsistent with the majesty of law. But ruder ages had ruder sentiments. Force was necessary to repel force; and men accustomed to see the king's authority defied by private riot were not much shocked when it was resisted in defence of public freedom.

The Great Charter of John was secured by the election of twenty-five barons, as conservators of the compact. If the king, or the justiciary in his absence, should transgress any article, any four might demand reparation, and on denial carry their complaint to the rest of their body. "And those barons, with all the commons of the land, shall distrain and annoy us by every means in their power; that is, by seizing our castles, lands and possessions, and every other mode, till the wrong shall be repaired to their satisfaction; saving our person, and our queen and children. And when it shall be repaired, they shall obey us as before."* It is amusing to see the common law of distress introduced upon this gigantic scale; and the capture of the king's castles treated as analogous to impounding a neighbour's horse for breaking fences.

A very curious illustration of this feudal principle is found in the conduct of William earl of Pembroke, one of the greatest names in our an-

* Brady's Hist. vol. i. Appendix, p. 148.

cient history, towards Henry III. The king had defied him, which was tantamount to a declaration of war; alledging that he had made an inroad upon the royal domains. Pembroke maintained that he was not the aggressor, that the king had denied him justice, and been the first to invade his territory; on which account he had thought himself absolved from his homage, and at liberty to use force against the malignity of the royal advisers. "Nor would it be for the king's honour," the earl adds, "that I should submit to his will against reason, whereby I should rather do wrong to him, and to that justice which he is bound to administer towards his people: and I should give an ill example to all men, in deserting justice and right, in compliance with his mistaken will. For this would shew that I loved my worldly wealth better than justice." These words, with whatever dignity expressed, it may be objected, prove only the disposition of an angry and revolted earl. But even Henry fully admitted the right of taking arms against himself, if he had meditated his vassal's destruction, and disputed only the application of this maxim to the earl of Pembroke.*

These feudal notions, which placed the moral obligation of allegiance very low, acting under a weighty pressure from the real strength of the crown, were favourable to constitutional liberty.

* Matt. Paris, p. 330. Lyttleton's Hist. of Henry II. vol. iv. p. 41.

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The great vassals of France and Germany aimed at living independently on their fiefs, with no further concern for the rest, than as useful allies, having a common interest against the crown. But in England, as there was no prospect of throwing off subjection, the barons endeavoured only to lighten its burthen, fixing limits to prerogative by law, and securing their observation by parliamentary remonstrances, or by dint of arms. Hence, as all rebellions in England were directed only to coerce the government, or, at the utmost, to change the succession of the crown, without the smallest tendency to separation, they did not impair the national strength, nor destroy the character of the constitution. In all these contentions, it is remarkable that the people and clergy sided with the nobles against the throne. No individuals are so popular with the monkish annalists, who speak the language of the populace, as Simon earl of Leicester, Thomas earl of Lancaster, and Thomas duke of Glocester, all turbulent opposers of the royal authority, and probably little deserving of their panegyrics. Very few English historians of the middle ages are advocates of prerogative. This may be ascribed both to the equality of our laws, and to the interest which the aristocracy found in courting popular favour, when committed against so formidable an adversary as the king. And even now, when the stream, that once was hurried along gullies, and dashed down precipices, hardly betrays, upon its broad and tranquil bosom,

the motion that actuates it, it must still be accounted a singular happiness of our constitution, that, all ranks graduating harmoniously into one another, the interests of peers and commoners are radically interwoven; each in a certain sense distinguishable, but not balanced like opposite weights, not separated like discordant fluids, nor to be secured by insolence or jealousy, but by mutual adherence and reciprocal influences.

Influence which the state of manners gave the nobility.

From the time of Edward I. the feudal system and all the feelings connected with it declined very rapidly. But what the nobility lost in the number of their military tenants was in some degree compensated by the state of manners. The higher class of them, who took the chief share in public affairs, were exceedingly opulent; and their mode of life gave wealth an incredibly greater efficacy than it possesses at present. Gentlemen of large estates and good families, who had attached themselves to these great peers, who bore offices, which we should call menial, in their households, and sent their children thither for education, were of course ready to follow their banner in a rising, without much inquiry into the cause. Still less would the vast body of tenants, and their retainers, who were fed at the castle in time of peace, refuse to carry their pikes and staves into the field of battle. Many devices were used to preserve this aristocratic influence, which riches and ancestry of themselves rendered so formidable. Such was the maintenance of suits, or confederacies for the purpose of support-

ing each other's claims in litigation, which was the subject of frequent complaints in parliament, and gave rise to several prohibitory statutes. By help of such confederacies, parties were enabled to make violent entries upon the lands they claimed, which the law itself could hardly be said to discourage.* Even proceedings in courts of justice were often liable to intimidation and influence.† A practice much allied to confederacies of maintenance, though ostensibly more harmless, was that of giving liveries to all retainers of a noble family; but it had an obvious tendency to preserve that spirit of factious attachments and animosities, which it is the general policy of a wise government to dissipate. From the first year of Richard II. we find continual mention of this custom, with many legal provisions against it, but it was never abolished till the reign of Henry VII.‡

* If a man was disseised of his land, he might enter upon the disseisor, and reinstate himself without course of law. In what cases this right of entry was taken away, or *tolled*, as it was expressed, by the death or alienation of the disseisor, is a subject extensive enough to occupy two chapters of Littleton. What pertains to our inquiry, is that by an entry, in the old lawbooks, we must understand an actual re-possession of the disseisee, not a suit in ejectment, as it is now interpreted, but which is a comparatively modern proceeding. The first remedy, says Britton, of the disseisee is to collect a body of his friends, (recoiller amys et force) and without delay to cast out the disseisors, or at least to maintain himself in possession along with them. c. 44. This entry ought indeed by 5 Ric. II. stat. i. c. 8. to be made peaceably; and the justices might assemble the posse comitatus, to imprison persons entering on lands by violence, (15 Ric. II. c. 2.) but these laws imply the facts that made them necessary.

† No lord, or other person, by 20 Ric. II. c. 3., was permitted to sit on the bench with the justices of assize. Trials were sometimes over-awed by armed parties, who endeavoured to prevent their adversaries from appearing. Paston Letters, vol. iii. p. 119.

‡ From a passage in the Paston Letters, vol. ii. p. 23.) it appears that, far from these acts being re-

Prevalent habits of rapine.

These associations under powerful chiefs were only incidentally beneficial as they tended to withstand the abuses of prerogative. In their more usual course, they were designed to thwart the legitimate exercise of the king's government in the administration of the laws. All Europe was a scene of intestine anarchy during the middle ages; and though England was far less exposed to the scourge of private war than most nations on the continent, we should find, could we recover the local annals of every county, such an accumulation of petty rapine and tumult, as would almost alienate us from the liberty which served to engender it. This was the common tenor of manners, sometimes so much aggravated as to find a place in general history,* more often attested by records, during the three centuries that the house of Plantagenet sat on the throne. Disseisin, or forcible dispossession of freeholds, makes one of

garded, it was considered as a mark of respect to the king, when he came into a county, for the noblemen and gentry to meet him with as many attendants in livery as they could muster. Sir John Paston was to provide twenty men in their livery-gowns, and the duke of Norfolk two hundred. This illustrates the well-known story of Henry VII. and the earl of Oxford, and shews the mean and oppressive conduct of the king in that affair, which Hume has pretended to justify.

In the first of Edward IV. it is said in the roll of parliament, (vol. v. p. 407.) that, "by yevyng of liveries and signes, contrary to the statutes and ordinances made aforetyme, maintenaunce of quarrels, extortions, robberies, murders been multiplied and continued within this reame, to the grete disturbaunce and inquietation of the same."

* Thus to select one passage out of many; Eodem anno (1332) quidam maligni fulti quorundam magnatum præsidio, regis adolescentiam spernentes, et regnum perturbare intendentes, in tantam turbam creverunt, nemora et saltus occupaverunt, ita quod toti regno terrori essent. Walsingham, p. 132.

the most considerable articles in our law-books.* Highway robbery was from the earliest times a sort of national crime. Capital punishments, though very frequent, made little impression on a bold and licentious crew, who had at least the sympathy of those who had nothing to lose on their side, and flattering prospects of impunity. We know how long the outlaws of Sherwood lived in tradition; men, who, like some of their betters, have been permitted to redeem by a few

* I am aware that in many, probably a great majority of reported cases, this word was technically used, where some unwarranted conveyance, such as a feoffment by the tenant for life, was held to have wrought a disseisin; or where the plaintiff was allowed, for the purpose of a more convenient remedy, to feign himself disseised, which was called disseisin by election. But several proofs might be brought from the parliamentary petitions, and I doubt not, if nearly looked at, from the Year-books, that in other cases there was an actual and violent expulsion. And the definition of disseisin in all the old writers, such as Britton and Littleton, is obviously framed upon its primary meaning of violent dispossession, which the word had probably acquired long before the more peaceable disseisins, if I may use the expression, became the subject of the remedy by assise.

I would speak with deference of Lord Mansfield's elaborate judgement in Taylor dem. Atkins v. Horde, 1 Burrow 107. &c.; but some positions in it appear to me rather too strongly stated; and particularly, that the acceptance of the disseisor as tenant by the lord was necessary to render the disseisin complete; a condition, which I have not found hinted in any law-book. See Butler's note on Co. Litt. p. 330.; where that eminent lawyer expresses similar doubts as to Lord Mansfield's reasoning. It may however be remarked, that constructive, or elective disseisins, being of a technical nature, were more likely to produce cases in the Year-books, than those accompanied with actual violence, which would commonly turn only on matters of fact, and be determined by a jury.

A remarkable instance of violent disseisin, amounting in effect to a private war, may be found in the Paston Letters, occupying most of the fourth volume. One of the Paston family, claiming a right to Caister Castle, kept possession against the duke of Norfolk, who brought a large force, and laid a regular seige to the place, till it surrendered for want of provisions. Two of the besiegers were killed. It does not appear that any legal measures were taken to prevent or punish this outrage.

acts of generosity the just ignominy of extensive crimes. These indeed were the heroes of vulgar applause; but when such a judge as Sir John Fortescue could exult that more Englishmen were hanged for robbery in one year, than French in seven, and that "if an Englishman be poor, and see another having riches, which may be taken from him by might, he will not spare to do so,"* it may be perceived how thoroughly these sentiments had pervaded the public mind.

Such robbers, I have said, had flattering prospects of impunity. Besides the general want of communication, which made one who had fled from his own neighbourhood tolerably secure, they had the advantage of extensive forests to facilitate their depredations, and prevent detection. When outlawed, or brought to trial, the worst offenders could frequently purchase charters of pardon, which defeated justice in the moment of her blow.† Nor were the nobility ashamed to

* Difference between an Absolute and Limited Monarchy, p. 99.

† The manner in which these were obtained, in spite of law, may be noticed among the violent courses of prerogative. By statute 2 E. III. c. 2. confirmed by 10 E. III. c. 2., the king's power of granting pardons was taken away, except in cases of homicide per infortunium. Another act, 14 E. III. c. 15., reciting that the former laws in this respect have not been kept, declares that all pardons contrary to them shall be holden as null. This however was disregarded like the rest; and the commons began tacitly to recede from them, and endeavoured to compromise the question with the crown. By 27 E. III. stat. 1. c. 2., without adverting to the existing provisions, which may therefore seem to be repealed by implication, it is enacted that in every charter of pardon, granted at any one's suggestion, the suggestor's name, and the grounds of his suggestion shall be expressed, that if the same be found untrue, it may be disallowed. And in 13 R. II. stat. 2. c. 1. we are surprized to find the commons requesting that pardons might not be granted, as

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patronize men guilty of every crime. Several proofs of this occur in the rolls. Thus, for example, in the 22d of Edward III., the commons pray, that "whereas it is notorious how robbers and malefactors infest the country, the king would charge the great men of the land, that none such be maintained by them, privily or openly, but that they lend assistance to arrest and take such ill doers."*

if the subject were wholly unknown to the law; the king protesting in reply, that he will save his liberty and regality, as his progenitors had done before, but conceding some regulations, far less remedial than what were provided already by the 27th of Edw. II. Pardons make a pretty large head in Brooke's Abridgement, and were undoubtedly granted without scruple by every one of our kings. A pardon obtained in a case of peculiar atrocity is the subject of a specific remonstrance in 23 H. VI. Rot. Parl. vol. v. p. 111.

* Rot. Parl. vol. ii. p. 201. A strange policy, for which no rational cause can be alledged, kept Wales, and even Cheshire, distinct from the rest of the kingdom. Nothing could be more injurious to the adjacent countries. Upon the credit of their immunity from the jurisdiction of the king's courts, the people of Cheshire broke with armed bands into the neighbouring counties, and perpetrated all the crimes in their power. Rot. Parl. vol. iii. pp. 81. 201. 440. Stat. 1 H. IV. c. 18. As to the Welsh frontier, it was constantly almost in a state of war, which a very little good sense and benevolence in any one of our shepherds would have easily prevented, by admitting the conquered people to partake in equal privileges with their fellow-subjects. Instead of this, they satisfied themselves with aggravating the mischief by granting legal reprisals upon Welshmen. Stat. 2 H. IV. c. 16. Welshmen were absolutely excluded from bearing offices in Wales. The English living in the English towns of Wales earnestly petition, 23 H. VI. Rot. Parl. vol. v. p. 104. 154. that this exclusion may be kept in force. Complaints of the disorderly state of the Welsh frontier are repeated as late as 12 Edw. IV. vol. vi. p. 8.

It is curious that so early as 15 Edw. II., a writ was addressed to the earl of Arundel, justiciary of Wales, directing him to cause twenty-four discreet persons to be chosen from the north, and as many from the south of that principality, to serve in parliament. Rot. Parl. vol. i. p. 456. And we find a similar writ in the 20th of the same king. Prynne's Register, 4th part, p. 60. Willis says, that he has seen a return to one of these precepts, much obliterated, but from which it appears, that Conway, Beaumaris, and Carnarvon returned members. Notitia Parliamentaria, vol. i. preface, p. 15.

It is perhaps the most meritorious part of Edward I.'s government, that he bent all his power to restrain these breaches of tranquillity. One of his salutary provisions is still in constant use, the statute of coroners. Another more extensive, and, though partly obsolete, the foundation of modern laws, is the statute of Winton, which, reciting, that "from day to day robberies, murders, burnings and theft be more often used than they have been heretofore, and felons cannot be attainted by the oath of jurors which had rather suffer robberies on strangers to pass without punishment, than indite the offenders, of whom great part be people of the same country, or at the least, if the offenders be of another country, the receivers be of places near," enacts that hue and cry shall be made upon the commission of a robbery, and that the hundred shall remain answerable for the damage, unless the felons be brought to justice. It may be inferred from this provision, that the ancient law of frank-pledge, though retained longer in form, had lost its efficiency. By the same act, no stranger or suspicious person was to lodge even in the suburbs of towns; the gates were to be kept locked from sunset to sunrising; every host to be answerable for his guest; the highways to be cleared of trees and underwood for two hundred feet on each side; and every man to keep arms, according to his substance, in readiness to follow the sheriff on hue and cry raised after felons.*

* The statute of Winton was confirmed, and proclaimed afresh by the sheriffs. 7 R. II. c. 6. after an æra of great disorder.

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The last provision indicates that the robbers plundered the country in formidable bands. One of these, in a subsequent part of Edward's reign, burned the town of Boston during a fair, and obtained a vast booty, though their leader had the ill fortune not to escape the gallows.

The preservation of order throughout the country was originally entrusted, not only to the sheriff, coroner, and constables, but to certain magistrates, called conservators of the peace. These, in conformity to the democratic character of our Saxon government, were elected by the freeholders in their county-court.* But Edward I. issued commissions to carry into effect the statute of Winton; and from the beginning of Edward III.'s reign, the appointment of conservators was vested in the crown, their authority gradually enlarged by a series of statutes, and their title changed to that of justices. They were empowered to imprison and punish all rioters and other offenders, and such as they should find by indictment, or suspicion, to be reputed thieves or vagabonds; and to take sureties for good behaviour from persons of evil fame.† Such a jurisdiction was hardly more arbitrary than, in a free and civilized age, it has been thought fit to vest in magistrates; but it was ill endured by a people who placed their

* Blackstone, vol. i. c. 9. Carte, vol. ii. p. 203.

† 1 E. III. stat. 2. c. 16.; 4 E. III. c. 2.; 34 E. III. c. 1.; 7 R. II. c. 5. The institution excited a good deal of ill-will, even before these strong acts were passed. Many petitions of the commons in the 28th E. III., and other years complain of it. Rot. Parl. vol. ii.

notions of liberty in personal exemption from restraint, rather than any political theory. An act having been passed (2 R. II. stat. 2. c. 6.), in consequence of unusual riots and outrages, enabling magistrates to commit the ring-leaders of tumultuary assemblies without waiting for legal process till the next arrival of justices of gaol delivery, the commons petitioned next year against this "horrible grievous ordinance," by which "every freeman in the kingdom would be in bondage to these justices," contrary to the great charter, and to many statutes, which forbid any man to be taken without due course of law.* So sensitive was their jealousy of arbitrary imprisonment, that they preferred enduring riot and robbery to chastising them by any means that might afford a precedent to oppression, or weaken men's reverence for Magna Charta.

There are two subjects remaining, to which this retrospect of the state of manners naturally leads us, and which I would not pass unnoticed, though not perhaps absolutely essential to a constitutional history; because they tend in a very material degree to illustrate the progress of society, with which civil liberty and regular government are closely connected. These are, first, the servitude or villenage of the peasantry, and their gradual

* Rot. Parl. vol. iii. p. 65. It may be observed that this act, 2 E. II. c. 16. was not founded on a petition, but on the king's answer; so that the commons were no real parties to it, and accordingly call it an ordinance in their present petition. This naturally increased their animosity in treating it as an infringement of the subject's right.

emancipation from that condition; and secondly, the continual increase of commercial intercourse with foreign countries. But as the latter topic will fall more conveniently into the next part of this work, I shall postpone its consideration for the present.

Villenage of the peasantry. Its nature, and gradual extinction.

In a former passage I have remarked of the Anglo-Saxon ceorls, that neither their situation nor that of their descendants for the earlier reigns after the conquest appears to have been mere servitude. But from the time of Henry II., as we learn from Glanvil, the villein so called was absolutely dependent upon his lord's will, compelled to unlimited services, and destitute of property, not only in the land he held for his maintenance, but in his own acquisitions.* If a villein purchased or inherited land, the lord might seize it; if he accumulated stock, its possession was equally precarious. Against his lord he had no right of action; because his indemnity in damages, if he could have recovered any, might have been immediately taken away. If he fled from his lord's service, or from the land which he held, a writ issued de nativitate probandâ, and the master recovered his fugitive by law. His children were born to the same state of servitude; and, contrary to the rule of the civil law, where one parent was free, and the other in villenage, the offspring followed their father's condition.†

* Glanvil, l. v. c. 5.

† According to Bracton, the bastard of a nief, or female villein, was born in servitude; and where the parents lived on a villein tenement, the children of a nief, even

This was certainly a severe lot; yet there are circumstances which materially distinguish it from slavery. The condition of villenage, at least in later times, was perfectly relative; it formed no distinct order in the political œconomy. No man was a villein in the eye of law, unless his master claimed him; to all others he was a freeman, and might acquire, dispose of, or sue for property without impediment. Hence Sir E. Coke argues, that villeins are included in the 29th article of Magna Charta: "No freeman shall be disseised, nor imprisoned."* For murder, rape, or mutilation of

though married to a freeman, were villeins. l. iv. c. 21. and see Beames's translation of Glanvil, p. 109. But Littleton lays down an opposite doctrine, that a bastard was necessarily free; because, being the child of no father in the contemplation of law, he could not be presumed to inherit servitude from any one; and makes no distinction as to the parent's residence. Sect. 188. I merely take notice of this change in the law between the reigns of Henry III. and Edward IV. as an instance of the bias which the judges shewed in favour of personal freedom. Another, if we can rely upon it, is more important. In the reign of Henry II., a freeman marrying a nief and settling on a villein tenement lost the privileges of freedom during the time of his occupation; legem terræ quasi nativus amittit. Glanvil, l. v. c. 6. This was consonant to the customs of some other countries, some of which went farther, and treated such a person for ever as a villein. But, on the contrary, we find in Britton, a century later, that the nief herself by such a marriage became free during the coverture. c. 31.

* I must confess that I have some doubts, how far this was law at the epoch of Magna Charta. Glanvil and Bracton both speak of the *status villenagii*, as opposed to that of liberty, and seem to consider it as a civil condition, not a merely personal relation. The civil law and the French treatise of Beaumanoir hold the same language. And Sir Robert Cotton maintains without hesitation, that villeins are not within the 29th section of Magna Charta, "being excluded by the word liber." Cotton's Posthuma, p. 223. Britton however, a little after Bracton, says that in an action the villein is answerable to all men, and all men to him. p. 79. And later judges, in favorem libertatis, gave this construction to the villein's situation, which must therefore be considered as the clear law of England in the fourteenth and fifteenth centuries.

his villein, the lord was indictable at the king's suit; though not for assault or imprisonment, which were within the sphere of his seignorial authority.*

This class was distinguished into villeins regardant, who had been attached from time immemorial to a certain manor, and villeins in gross, where such territorial prescription had never existed, or had been broken. In the condition of these, whatever has been said by some writers, I can find no manner of difference; the distinction was merely technical, and affected only the mode of pleading.† The term, in gross, is appropriated in our legal language to property held absolutely,

* Littleton, sect. 189. 190. speaks only of an appeal in the two former cases; but an indictment is à fortiori; and he says, sect. 194., that an indictment, though not an appeal, lay against the lord for maiming his villein.

† Gurdon, on Courts Baron, p. 592., supposes the villein in gross to have been the Lazzus or Servus of early times, a domestic serf, and of an inferior species to the cultivator, or villein regardant. Unluckily Bracton and Littleton do not confirm this notion, which would be convenient enough; for in Domesday Book there is a marked distinction between the Servi and Villani. Blackstone expresses himself inaccurately when he says the villein in gross was annexed to the person of the lord, and transferrible by deed from one owner to another. By this means indeed a villein regardant would become a villein in gross, but all villeins were alike liable to be sold by their owners. Littleton, sect. 181. Blomefield's Norfolk, vol. iii. p. 860. Mr. Hargrave supposes that villeins in gross were never numerous; (Case of Somerset, Howell's State Trials, vol. xx. p. 42.) drawing this inference from the few cases relative to them, that occur in the Year-books. And certainly the form of the writ de nativitate probandâ, and the peculiar evidence it required, which may be found in Fitzherbert's Natura Brevium, or in Mr. H.'s argument, are only applicable to the other species. It is a doubtful point, whether a freeman could, in contemplation of law, become a villein in gross; though his confession in a court of record, upon a suit already commenced, (for this was requisite,) would estop him from claiming his liberty; and hence Bracton speaks of this proceeding as a mode by which a freeman might fall into servitude.

and without reference to any other. Thus it is applied to rights of advowson or of common, when possessed simply, and not as incident to any particular lands. And there can be no doubt, that it was used in the same sense for the possession of a villein. But there was a class of persons, sometimes inaccurately confounded with villeins, whom it is more important to separate. Villenage had a double sense, as it related to persons, or to lands. As all men were free or villeins, so all lands were held by a free or villein tenure. This great division of tenures was probably derived from the bocland and folkland of Saxon times. As a villein might be enfeoffed of freeholds, though they lay at the mercy of his lord, so a freeman might hold tenements in villenage. In this case, his personal liberty subsisted along with the burthens of territorial servitude. He was bound to arbitrary service at the will of the lord, and he might by the same will be at any moment dispossessed; for such was the condition of his tenure. But his chattels were secure from seizure, his person from injury, and he might leave the land whenever he pleased.*

From so disadvantageous a condition as this of villenage, it may cause some surprize that the peasantry of England should have ever emerged. The law incapacitating a villein from acquiring property, placed, one would imagine, an insurmountable barrier in the way of his enfranchisement. It followed from thence, and is positively

* Bracton, l. ii. c. 8.; l. iv. c. 28. Littleton, sect. 172.

said by Glanvil, that a villein could not buy his freedom, because the price he tendered would already belong to his lord.* And even in the case of free tenants in villenage, it is not easy to comprehend how their uncertain and unbounded services could ever pass into slight pecuniary commutations; much less how they could come to maintain themselves in their lands, and mock the lord with a nominal tenure according to the custom of the manor.

This, like many others relating to the progress of society, is a very obscure inquiry. We can trace the pedigree of princes, fill up the catalogue of towns besieged and provinces desolated, describe even the whole pageantry of coronations and festivals, but we cannot recover the genuine history of mankind. It has passed away with slight and partial notice by contemporary writers; and our most patient industry can hardly at present put together enough of the fragments to suggest a tolerably clear representation of ancient manners and social life. I cannot profess to undertake what would require a command of books as well as leisure beyond my reach; but the following observations may tend a little to illustrate our immediate subject, the gradual extinction of villenage.

If we take what may be considered as the simplest case, that of a manor divided into demesne lands of the lord's occupation, and those in the

* Glanvil, l. v. c. 5.

tenure of his villeins, performing all the services of agriculture for him, it is obvious that his interest was to maintain just so many of these as his estate required for its cultivation. Land, the cheapest of articles, was the price of their labour; and though the law did not compel him to pay this or any other price, yet necessity, repairing in some degree the law's injustice, made those pretty secure of food and dwellings, who were to give the strength of their arms for his advantage. But, in course of time, as alienations of small parcels of manors to free tenants came to prevail, the proprietors of land were placed in a new situation relatively to its cultivators. The tenements in villenage, whether by law or usage, were never separated from the lordship, while its domain was reduced to a smaller extent, through sub-infeudations, sales, or demises for valuable rent. The purchasers under these alienations had occasion for labourers; and these would be free servants in respect of such employers, though in villenage to their original lord. As he demanded less of their labour, through the diminution of his domain, they had more to spare for other masters; and retaining the character of villeins and the lands they held by that tenure, became hired labourers in husbandry for the greater part of the year. It is true, that all their earnings were at the lord's disposal, and that he might have made a profit of their labour, when he ceased to require it for his own land. But this, which the rapacity of more commercial times would have instantly suggested,

might escape a feudal superior, who, wealthy beyond his wants, and guarded by the haughtiness of ancestry against the love of such pitiful gains, was better pleased to win the affection of his dependants, than to improve his fortune at their expense.

The services of villenage were gradually rendered less onerous and uncertain. Those of husbandry indeed are naturally uniform, and might be anticipated with no small exactness. Lords of generous tempers granted indulgencies, which were either intended to be, or readily became perpetual. And thus, in the time of Edward I., we find the tenants in some manors bound only to stated services, as recorded in the lord's book.* Some of these perhaps might be villeins by blood; but free tenants in villenage were still more likely to obtain this precision in their services; and from claiming a customary right to be entered in the court-roll upon the same terms as their predecessors, prevailed at length to get copies of it for their security.† Proofs of this remarkable transformation from tenants in villenage to copyholders are found in the reign of Henry III. I do not know, however, that they were protected,

* Dugdale's Warwickshire apud Eden's State of the Poor, vol. i. p. 13. A passage in another local history rather seems to indicate, that some kind of delinquency was usually alledged, and some ceremony employed, before the lord entered on the villein's land. In Gissing manor, 39. E. III., the jury present, that W. G. a villein by blood was a rebel and ungrateful toward his lord, for which all his tenements were seized. His offence was the having said that the lord kept four stolen sheep in his field. Blomefield's Norfolk, vol. i. p. 114.

† Gurdon on Courts Baron, p. 574.

at so early an epoch, in the possession of their estates. But it is said in the year-book of the 42d of Edward III., to be "admitted for clear law, that if the customary tenant or copyholder does not perform his services, the lord may seize his land as forfeited."* It seems implied herein, that so long as the copyholder did continue to perform the regular stipulations of his tenure, the lord was not at liberty to divest him of his estate; and this is said to be confirmed by a passage in Britton, which has escaped my search; though Littleton intimates, that copyholders could have no remedy against their lord.† However in the reign of Edward IV., this was put out of doubt by the judges, who permitted the copyholder to bring his action of trespass against the lord for dispossession.

While some of the more fortunate villeins crept up into property, as well as freedom under the name of copyholders, the greater part enfranchised

* Brooke's Abridgm. Tenant par copie, 1. By the extent-roll of the manor of Brisingham in Norfolk in 1254, it appears that there were then ninety-four copyholders, and six cottagers in villenage; the former performing many, but determinate services of labour for the lord. Blomefield's Norfolk, vol. i. p. 34.

† Littl. sect. 77. A copyholder without legal remedy may seem little better than a tenant in mere villenage, except in name. But though from the relation between the lord and copyholder the latter might not be permitted to sue his superior, yet it does not follow that he might not bring his action against any person acting under the lord's direction, in which the defendant could not set up an illegal authority; just as, although no writ runs against the king, his ministers or officers are not justified in acting under his command contrary to law. I wish this note to be considered as correcting one in my first volume, p. 215, where I have said that a similar law in France rendered the distinction between a serf and a homme de poote little more than theoretical.

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themselves in a different manner. The law, which treated them so harshly, did not take away the means of escape, nor was this a matter of difficulty in such a country as England. To this indeed the unequal progression of agriculture and population in different counties would have naturally contributed. Men emigrated, as they always must, in search of cheapness or employment, according to the tide of human necessities. But the villein, who had one additional motive to urge his steps away from his native place, might well hope to be forgotten or undiscovered, when he breathed a freer air, and engaged his voluntary labour to a distant master. The lord had indeed an action against him;* but there was so little communication between remote parts of the country, that it might be deemed his fault or singular ill-fortune, if he were compelled to defend himself. Even in that case, the law inclined to favour him; and so many obstacles were thrown in the way of these suits to reclaim fugitive villeins, that they could not have operated materially to retard their general enfranchisement.* In one case indeed, that of unmolested residence for a year and a day within a walled city or borough, the villein became free, and the lord was absolutely barred of his remedy. This provision is contained even in the laws of William the Conqueror, as contained in Hoveden, and if it be not an interpolation, may

* See the rules of pleading and evidence in questions of villenage fully stated in Mr. Hargrave's argument in the case of Somerset. Howell's State Trials, vol. xx. p. 38.

be supposed to have had a view to strengthen the population of those places, which were designed for garrisons. This law, whether of William or not, is unequivocally mentioned by Glanvil.* Nor was it a mere letter. According to a record in the 6th of Edward II., Sir John Clavering sued eighteen villeins of his manor of Cossey, for withdrawing themselves therefrom with their chattels; whereupon a writ was directed to them; but six of the number claimed to be freemen, alledging the conqueror's charter, and offering to prove that they had lived in Norwich, paying scot and lot, about thirty years; which claim was admitted.†

By such means, a large proportion of the peasantry, before the middle of the fourteenth century, had become hired labourers instead of villeins. We first hear of them, on a grand scale, in an ordinance made by Edward III., in the twenty-third year of his reign. This was just after the dreadful pestilence of 1348; and it recites that the number of workmen and servants having been greatly reduced by that calamity, the remainder demanded excessive wages from their employers. Such an enhancement in the price of labour, though founded exactly on the same principles as regulate the value of any other commodity, is too frequently treated as a sort of crime by lawgivers, who grudge the poor that transient melioration of

* l. v. c. 5.

† Blomefield's Norfolk, vol. i. p. 657. I know not how far this privilege was supposed to be impaired by the statute 34 E. III. c. 11.; which however might, I should conceive, very well stand along with it.

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their lot, which the progress of population, or other analogous circumstances, will, without any interference, very rapidly take away. This ordinance therefore enacts, that every man in England, of whatever condition, bond or free, of able body, and within sixty years of age, not living of his own, nor by any trade, shall be obliged, when required, to serve any master who is willing to hire him, at such wages as were usually paid three years since, or for some time preceding; provided, that the lords of villeins or tenants in villenage shall have the preference of their labour, so that they retain no more than shall be necessary for them. More than these old wages is strictly forbidden to be offered, as well as demanded. No one is permitted, under colour of charity, to give alms to a beggar. And, to make some compensation to the inferior classes for these severities, a clause is inserted, as wise, just, and practicable as the rest, for the sale of provisions at reasonable prices.*

This ordinance met with so little regard, that a statute was made in parliament two years after, fixing the wages of all artificers and husbandmen, with regard to the nature and season of their labour. From this time it became a frequent complaint of the commons, that the statute of labourers was not kept. The king had in this case, probably, no other reason for leaving their grievance unredressed, than his inability to change

* Stat. 23 E. III.

the order of Providence. A silent alteration had been wrought in the condition and character of the lower classes during the reign of Edward III. This was the effect of increased knowledge and refinement, which had been making a considerable progress for full half a century, though they did not readily permeate the cold region of poverty and ignorance. It was natural that the country people, or uplandish folk, as they were called, should repine at the exclusion from that enjoyment of competence, and security for the fruits of their labour, which the inhabitants of towns so fully possessed. The fourteenth century was, in many parts of Europe, the age when a sense of political servitude was most keenly felt. Thus the insurrection of the Jacquerie in France about the year 1358 had the same character, and resulted in a great measure from the same causes as that of the English peasants in 1382. And we may account in a similar manner for the democratical tone of the French and Flemish cities, and for the prevalence of a spirit of liberty in Germany and Swisserland.

I do not know whether we should attribute part of this revolutionary concussion to the preaching of Wicliffe's disciples, or look upon both one and the other as phænomena belonging to that particular epoch in the progress of society. New principles, both as to civil rule and religion, broke suddenly upon the uneducated mind, to render it bold, presumptuous and turbulent. But at least I make little doubt that the dislike of

ecclesiastical power, which spread so rapidly among the people at this season, connected itself with a spirit of insubordination and an intolerance of political subjection. Each were nourished by the same teachers, the lower secular clergy; and however distinct we may think a religious reformation from a civil anarchy, there was a good deal common in the language, by which the populace were inflamed to either one or the other. Even the scriptural moralities which were then exhibited, and which became the foundation of our theatre, afforded fuel to the spirit of sedition. The common original, and common destination of mankind, with every other lesson of equality which religion supplies to humble or to console, were displayed with coarse and glaring features in these representations. The familiarity of such ideas has deadened their effect upon our minds; but when a rude peasant, surprizingly destitute of religious instruction during that corrupt age of the church, was led at once to these impressive truths, we cannot be astonished at the intoxication of mind they produced.*

* I have been more influenced by natural probabilities than testimony, in ascribing this effect to Wicliffe's innovations, because the historians are prejudiced witnesses against him. Several of them depose to the connexion between his opinions and the rebellion of 1382; especially Walsingham, p. 288. This implies no reflection upon Wicliffe, any more than the crimes of the anabaptists in Munster do upon Luther. Every one knows the distich of John Ball, which comprehends the essence of religious democracy: "When Adam delved and Eve span, Where was then the gentleman?" The sermon of this priest, as related by Walsingham, p. 275. derives its argument for equality from the common origin of the species. He is said to have been a disciple of Wicliffe. Turner's Hist. of England, vol. ii. p. 420.

Though I believe that, compared at least with the aristocracy of other countries, the English lords were guilty of very little cruelty or injustice, yet there were circumstances belonging to that period, which might tempt them to deal more hardly than before with their peasantry. The fourteenth century was an age of greater magnificence than those which had preceded; in dress, in ceremonies, in buildings; foreign luxuries were known enough to excite an eager demand among the higher ranks, and yet so scarce as to yield inordinate prices; while the land-owners were on the other hand impoverished by heavy and unceasing taxation. Hence it is probable that avarice, as commonly happens, had given birth to oppression; and if the gentry, as I am inclined to believe, had become more attentive to agricultural improvements, it is reasonable to conjecture, that those whose tenure obliged them to unlimited services of husbandry were more harrassed, than under their wealthy and indolent masters in preceding times.

The storm that almost swept away all bulwarks of civilized and regular society seems to have been long in collecting itself. Perhaps a more sagacious legislature might have contrived to disperse it; but the commons only presented complaints of the refractoriness with which villeins and tenants in villenage refused their due services;* and the exigencies of government led to the fatal poll-tax

* Stat. 1 R. II. c. 6.; Rot. Parl. vol. iii. p. 21.

of a groat, which was the proximate cause of the insurrection. By the demands of these rioters, we perceive that territorial servitude was far from extinct; but it should not be hastily concluded that they were all personal villeins, for a large proportion were Kentish-men, to whom that condition could not have applied; it being a good bar to a writ de nativitate probandâ, that the party's father was born in the county of Kent.*

After this tremendous rebellion, it might be expected that the legislature would use little indulgence towards the lower commons. Such unhappy tumults are doubly mischievous, not more from the immediate calamities that attend them, than from the fear and hatred of the people which they generate in the elevated classes. The general charter of manumission extorted from the king by the rioters at Blackheath was annulled by proclamation to the sheriffs;† and this revocation approved by the lords and commons in parliament; who added, as was very true, that such enfranchisement could not be made without their consent; "which they would never give to save themselves from perishing altogether in one day."‡ Riots were turned into treason by a law of the same parliament.§ By a very harsh statute

* 30 E. I., in Fitzherbert. Villenage, apud Lambard's Perambulation of Kent, p. 632. Somner on Gavelkind, p. 72.

† Rymer, t. vii. p. 316., &c. The king holds this bitter language to the villeins of Essex, after the death of Tyler and execution of the other leaders had disconcerted them: Rustici quidem fuistis et estis, in bondagio permanebitis, non ut hactenus, sed incomparabiliter viliori, &c. Walsingham, p. 269.

‡ Rot. Parl. vol. iii. p. 100.

§ 5 R. II. c. 7. The words are,

in the 12th of Richard II., no servant or labourer could depart, even at the expiration of his service, from the hundred in which he lived without permission under the king's seal; nor might any who had been bred to husbandry till twelve years old exercise any other calling.* A few years afterwards, the commons petitioned that villeins might not put their children to school, in order to advance them by the church; "and this for the honour of all the freemen of the kingdom." In the same parliament they complained, that villeins fly to cities and boroughs, whence their masters cannot recover them; and, if they attempt it, are hindered by the people; and prayed that the lords might seize their villeins in such places, without regard to the franchises thereof. But on both these petitions the king put in a negative.†

From henceforward we find little notice taken of villenage in parliamentary records, and there seems to have been a rapid tendency to its entire abolition. But the fifteenth century is barren of materials; and we can only infer that as the same causes, which in Edward III.'s time had converted a large portion of the peasantry into free labourers, still continued to operate, they must

riot et rumour *n'autres semblables*; rather a general way of creating a new treason; but panic puts an end to jealousy.

* 12 R. II. c. 3.

† Rot. Parl. 15 R. II. vol. iii. p. 294. 296. The statute 7 H. IV. c. 17. enacts that no one shall put his son or daughter apprentice to any trade in a borough, unless he have land or rent to the value of twenty shillings a year, but that any one may put his children to school. The reason assigned is the scarcity of labourers in husbandry, in consequence of people living in *Upland* apprenticing their children.

silently have extinguished the whole system of personal and territorial servitude. The latter indeed was annihilated by the establishment of the law of copyhold.

I cannot presume to conjecture in what degree voluntary manumission is to be reckoned among the means that contributed to the abolition of villenage. Charters of enfranchisement were very common upon the continent. They may perhaps have been less so in England. Indeed the statute de donis must have operated very injuriously to prevent the enfranchisement of villeins regardant, who were entailed along with the land.* Instances however occur from time to time; and we cannot expect to discover many. One appears as early as the 15th year of Henry III., who grants to all persons born or to be born within his village of Contishall, that they shall be free from all villenage in body and blood, paying an aid of twenty shillings to knight the king's eldest son, and six shillings a year as a quit rent.† So, in the 12th of Edward III., certain of the king's villeins are enfranchised on payment of a fine.‡ In strictness of law, a fine from the villein for the sake of enfranchisement was nugatory, since all he could possess was already at his lord's

* If we may believe what is said in Blomefield's Hist. of Norfolk, vol. iii. p. 572., the lord's wife was a necessary party to the manumission of a villein, in order to bar her dower. If this were law, which it seems difficult on principle to deny, the enfranchisement of a villein must have been a troublesome business; for one does not see how she could have barred her right except by fine.

† Blomefield's Norfolk, vol. iii. p. 571.

‡ Rymer, t. v. p. 44.

disposal. But custom and equity might easily introduce different maxims; and it was plainly for the lord's interest to encourage his tenants in the acquisition of money to redeem themselves, rather than to quench the exertions of their industry by availing himself of an extreme right. Deeds of enfranchisement occur in the reigns of Mary and Elizabeth;* and perhaps a commission of the latter princess in 1574, directing the enfranchisement of her bondmen and bondwomen on certain manors upon payment of a fine, is the last unequivocal testimony to the existence of villenage;† though it is highly probable that it existed in remote parts of the country some time longer.‡

Reign of Henry VI.

From this general view of the English constitution, as it stood about the time of Henry VI., we must turn our eyes to the political revolutions which clouded the latter years of his reign. The minority of this prince, notwithstanding the vices and dissensions of his court, and the inglorious

* Gurdon on Courts Baron, p. 596. Madox, Formulare Anglicanum, p. 420. Barrington on Ancient Statutes, p. 278. It is said in a modern book, that villenage was very rare in Scotland, and even that no instance exists in records, of an estate sold with the labourers and their families attached to the soil. Pinkerton's Hist. of Scotland, vol. i. p. 147.

† Barrington, ubi supra, from Rymer.

‡ There are several later cases reported, wherein villenage was pleaded, and one of them as late as the 15th of James I. (Noy, p. 27.) See Hargrave's argument, State Trials, vol. xx. p. 41. But these are so briefly stated, that it is difficult in general to understand them. It is obvious, however, that judgement was in no case given in favour of the plea; so that we can infer nothing as to the actual continuance of villenage.

It is remarkable, and may be deemed by some persons a proof of legal pedantry, that Sir E. Coke, while he dilates on the law of villenage, never intimates that it was become antiquated.

discomfiture of our arms in France, was not perhaps a calamitous period. The country grew more wealthy; the law was, on the whole, better observed; the power of parliament more complete and effectual than in preceding times. But Henry's weakness of understanding, becoming evident as he reached manhood, rendered his reign a perpetual minority. His marriage with a princess of strong mind, but ambitious and vindictive, rather tended to weaken the government, and to accelerate his downfall; a certain reverence that had been paid to the gentleness of the king's disposition being overcome by her unpopularity. By degrees Henry's natural feebleness degenerated almost into fatuity; and this unhappy condition seems to have overtaken him, nearly about the time when it became an arduous task to withstand the assault in preparation against his government. This may properly introduce a great constitutional subject, to which some peculiar circumstances of our own age have imperiously directed the consideration of parliament. Though the proceedings of 1788 and 1810 are undoubtedly precedents of far more authority than any that can be derived from our ancient history; yet, as the seal of the legislature has not yet been set upon this controversy, it is not perhaps altogether beyond the possibility of future discussion; and at least it cannot be uninteresting to look back on those parallel or analogous cases, by which the deliberations of parliament upon the question of regency were guided.

While the kings of England retained their continental dominions, and were engaged in the wars to which those gave birth, they were of course frequently absent from this country. Upon such occasions, the administration seems at first to have devolved officially on the justiciary, as chief servant of the crown. But Henry III. began the practice of appointing lieutenants, or guardians of the realm (custodes regni), as they were more usually termed, by way of temporary substitutes. They were usually nominated by the king without consent of parliament; and their office carried with it the right of exercising all the prerogatives of the crown. It was of course determined by the king's return; and a distinct statute was necessary in the reign of Henry V., to provide that a parliament called by the guardian of the realm during the king's absence should not be dissolved by that event.* The most remarkable circumstance attending those lieutenancies was that they were sometimes conferred on the heir apparent during his infancy. The Black Prince, then duke of Cornwall, was left guardian of the realm in 1339, when he was but ten years old;† and Richard his son, when still younger, in 1372, during Edward III.'s last expedition into France.‡

Historical instances of regencies:

During the absence of our kings in France:

These do not however bear a very close analogy to regencies in the stricter sense, or substitutions during the natural incapacity of the sovereign.

* 8 H. V. c. 1.

† This prince having been sent to Antwerp, six commissioners were appointed to open parliament. Rot. Parl. 13 E. III. vol. ii. p. 107.

‡ Rymer, t. vi. p. 748.

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Of such there had been several instances, before it became necessary to supply the deficiency arising from Henry's derangement. 1. At the death of John, William earl of Pembroke assumed the title of rector regis et regni, with the consent of the loyal barons who had just proclaimed the young king, and probably conducted the government in a great measure by their advice.* But the circumstances were too critical, and the time is too remote, to give this precedent any material weight. 2. Edward I. being in Sicily at his father's death, the nobility met at the Temple church, as we are informed by a contemporary writer, and, after making a new great seal, appointed the archbishop of York, Edward earl of Cornwall, and the earl of Glocester, to be ministers and guardians of the realm; who accordingly conducted the administration in the king's name until his return.† It is here observable, that the earl of Cornwall, though nearest prince of the blood, was not supposed to enjoy any superior title to the regency, wherein he was associated with two other nobles. But while the crown itself was hardly acknowledged to be unquestionably hereditary, it would be strange if any notion of such a right to the regency had been entertained. 3. At the accession of Edward III., then fourteen years old, the parliament which was immediately summoned nominated four bishops, four earls, and six barons

At the accession of Henry III.;

of Edward I.;

of Edward III.;

* Matt. Paris, p. 243.

† Matt. Westmonast. ap. Brady's History of England, vol. ii. p. 1.

as a standing council, at the head of which the earl of Lancaster seems to have been placed, to advise the king in all business of government. It was an article in the charge of treason, or, as it was then styled, of accroaching royal power, against Mortimer, that he intermeddled in the king's household without the assent of this council.* They may be deemed therefore a sort of parliamentary regency, though the duration of their functions does not seem to be defined.

4. The proceedings at the commencement of the next reign are more worthy of attention. Edward III. dying June 21, 1377, the keepers of the great seal next day, in absence of the chancellor beyond sea, gave it into the young king's hands before his council. He immediately delivered it to the duke of Lancaster, and the duke to Sir Nicholas Bonde for safe custody. Four days afterwards, the king in council delivered the seal to the bishop of St. Davids, who affixed it the same day to divers letters patent.† Richard was at this time ten years and six months old; an age certainly very unfit for the personal execution of sovereign authority. Yet he was supposed capable of reigning without the aid of a regency. This might be in virtue of a sort of magic ascribed by lawyers to the great seal, the possession of which bars all further inquiry, and renders any government legal. The practice of modern times, requiring the constant exercise of the sign manual,

of Richard II.;

* Rot. Parl. vol. ii. p. 52. † Rymer, t. vii. p. 171.

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has made a public confession of incapacity necessary in many cases, where it might have been concealed or overlooked in earlier periods of the constitution. But, though no one was invested with the office of regent, a council of twelve was named by the prelates and peers at the king's coronation, July 16, 1377, without whose concurrence no public measure was to be carried into effect. I have mentioned in another place the modifications introduced from time to time by parliament, which might itself be deemed a great council of regency during the first years of Richard.

of Henry VI.

5. The next instance is at the accession of Henry VI. This prince was but nine months old at his father's death; and whether from a more evident incapacity for the conduct of government in his case than in that of Richard II., or from the progress of constitutional principles in the forty years elapsed since the latter's accession, far more regularity and deliberation were shewn in supplying the defect in the executive authority. Upon the news arriving that Henry V. was dead, several lords spiritual and temporal assembled, on account of the imminent necessity, in order to preserve peace, and provide for the exercise of offices appertaining to the king. These peers accordingly issued commissions to judges, sheriffs, escheators and others for various purposes, and writs for a new parliament. This was opened by commission under the great seal directed to the duke of Glocester,

in the usual form, and with the king's teste.* Some ordinances were made in this parliament by the duke of Glocester as commissioner, and some in the king's name. The acts of the peers who had taken on themselves the administration, and summoned parliament were confirmed. On the twenty-seventh day of its session, it is entered upon the roll, that the king, "considering his tender age, and inability to direct in person the concerns of his realm, by assent of lords and commons, appoints the duke of Bedford, or, in his absence beyond sea, the duke of Glocester, to be protector and defender of the kingdom and English church, and the king's chief counsellor." Letters patent were made out to this effect; the appointment being however expressly during the king's pleasure. Sixteen counsellors were named in parliament to assist the protector in his administration; and their concurrence was made necessary to the removal and appointment of officers, except some inferior patronage specifically reserved to the protector. In all important business that should pass by order of council, the whole, or major part, were to be present; "but if it were such matter that the king hath been accustomed to be counselled of, that then the said lords proceed not therein without the advice of my lords of Bedford or Glocester."† A few more counsellors were added by the next parliament,

* Rot. Parl. vol. iv. p. 169.

† p. 174. 176.

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and divers regulations established for their observance.*

This arrangement was in contravention of the late king's testament which had conferred the regency on the duke of Glocester, in exclusion of his elder brother. But the nature and spirit of these proceedings will be better understood by a remarkable passage in a roll of a later parliament; where the house of lords, in answer to a request of Glocester, that he might know what authority he possessed as protector, remind him that in the first parliament of the king,† "ye desired to have had ye governaunce of yis land; affermyng yat hit belonged unto you of rygzt, as well by ye mene of your birth, as by ye laste wylle of ye kyng yat was your broyer, whome God assoile; alleggyng for you such groundes and motyves as it was yought to your discretion made for your intent: whereupon, the lords spiritual and temporal assembled there in parliament, among which were there my lordes your uncles, the bishop of Winchester that now liveth, and the duke of Exeter, and your cousin the earl of March that be gone to God, and of Warwick, and other in great number that now live, had great and long deliberation and advice, searched precedents of the governail of the land in

* Rot. Parl. vol. iv. p. 201.

† I follow the orthography of the roll, which I hope will not be inconvenient to the reader. Why this orthography, from obsolete and difficult, so frequently becomes almost modern, as will appear in the course of these extracts, I cannot conjecture. The usual irregularity of ancient spelling is hardly sufficient to account for such variations; but, if there be any error, it belongs to the superintendants of that publication, and is not mine.

time and case semblable, when kings of this land have been tender of age, took also information of the laws of the land, of such persons as be notably learned therein, and finally found your said desire not caused nor grounded in precedent, nor in the law of the land; the which the king that dead is, in his life nor might by his last will nor otherwise altre, change, nor abroge, without the assent of the three estates, nor commit or grant to any person governance or rule of this land longer than he lived; but on that other behalf, the said lords found your said desire not according with the laws of this land, and against the right and fredome of the estates of the same land. Howe were it, that it be not thought, that any such thing wittingly proceeded of your intent; and nevertheless to keep peace and tranquillity, and to the intent to ease and appease you, it was advised and appointed, by authority of the king, assenting the three estates of this land, that ye in absence of my lord your brother of Bedford, should be chief of the king's council, and devised unto you a name different from other counsellors, not the name of tutor, lieutenant, governor, nor of regent, nor no name that should import authority of governance of the land, but the name of protector and defensor, which importeth a personal duty of attendance to the actual defense of the land, as well against enemies outward, if case required, as against rebels inward, if any were, that God forbid; granting you therewith certain power, the which is specified and contained in an act of the said parliament,

to endure as long as it liked the king. In the which if the intent of the said estates had been, that ye more power and authority should have had, more should have been expressed therein; to the which appointment, ordinance, and act, ye then agreed you as for your person, making nevertheless protestation, that it was not your intent in any wise to deroge, or do prejudice unto my lord your brother of Bedford by your said agreement, as toward any right that he would pretend or claim in the governance of this land, and as toward any pre-eminence that you might have or belong unto you as chief of council, it is plainly declared in the said act and articles, subscribed by my said lord of Bedford, by yourself, and the other lords of the council. But as in parliament to which ye be called upon your faith and ligeance as duke of Glocester, as other lords be, and not otherwise, we know no power nor authority that ye have, other than ye as duke of Glocester should have, the king being in parliament, at years of mest discretion: We marvailing with all our hearts, that considering the open declaration of the authority and power belonging to my lord of Bedford, and to you in his absence, and also to the king's council, subscribed purely and simply by my said lord of Bedford, and by you, that you should in any wise be stirred or moved not to content you therewith, or to pretend you any other: Namely considering, that the king, blessed be our lord, is sith the time of the said power granted unto you, far gone and grown in person, in wit and understanding, and

like with the grace of God to occupy his own royal power within few years: And forasmuch considering the things and causes abovesaid, and other many that long were to write, We lords aforesaid pray, exhort and require you, to content you with the power abovesaid and declared, of the which my lord your brother of Bedford, the king's eldest uncle, contented him; and that ye none larger power desire, will, nor use; giving you this that is aboven written for our answer to your foresaid demand, the which we will dwell and abide with, withouten variance or changing. Over this beseeching and praying you in our most humble and lowly wise, and also requiring you in the king's name, that ye, according to the king's commandment, contained in his writ sent unto you in that behalf, come to this his present parliament, and intend to the good effect and speed of matters to be demesned and treted in the same, like as of right ye owe to do."*

It is evident, that this plain, or rather rude address to the duke of Glocester was dictated by the prevalence of Cardinal Beaufort's party in council and parliament. But the transactions in the former parliament are not unfairly represented; and comparing them with the passage extracted above, we may perhaps be entitled to infer: 1. That the king does not possess any constitutional prerogative of appointing a regent during the minority of his successor; and 2. That neither the heir presumptive, nor any other person, is entitled to exercise

* Rot. Parl. 6 H. VI. vol. iv. p. 326.

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the royal prerogative during the king's infancy, (or, by parity of reasoning, his infirmity,) nor to any title that conveys them; the sole right of determining the persons by whom, and fixing the limitations under which, the executive government shall be conducted in the king's name and behalf, devolving upon the great council of parliament.

The expression used in the lords address to the duke of Glocester relative to the young king, that he was far gone and grown in person, wit and understanding, was not thrown out in mere flattery. In two years the party hostile to Glocester's influence had gained ground enough to abrogate his office of protector, leaving only the honorary title of chief counsellor.* For this the king's coronation, at eight years of age, was thought a fair pretence; and undoubtedly the loss of that exceedingly limited authority which had been delegated to the protector could not have impaired the strength of government. This was conducted as before by a selfish and disunited council; but the king's name was sufficient to legalize their measures, nor does any objection appear to have been made in parliament to such a mockery of the name of monarchy.

Henry's mental derangement.

In the year 1454, the 32d of Henry's reign, his unhappy malady, transmitted perhaps from his maternal grandfather, assumed so decided a character of derangement or imbecility, that parliament could no longer conceal from itself the ne-

* 8 H. VI. vol. iv. p. 336.

cessity of a more efficient ruler. This assembly, which had been continued by successive prorogations for nearly a year, met at Westminster on the 14th of February, when the session was opened by the duke of York, as king's commissioner. Kemp, archbishop of Canterbury and chancellor of England, dying soon afterwards, it was judged proper to acquaint the king at Windsor by a deputation of twelve lords with this and other subjects concerning his government. In fact, perhaps, this was a pretext chosen in order to ascertain his real condition. These peers reported to the lord's house, two days afterwards, that they had opened to his majesty the several articles of their message, but "could get no answer ne sign for no prayer ne desire," though they repeated their endeavours at three different interviews. This report, with the instruction on which it was founded, was, at their prayer, entered of record in parliament. Upon so authentic a testimony of their sovereign's infirmity, the peers, adjourning two days for solemnity or deliberation, "elected and nominated Richard duke of York to be protector and defender of the realm of England, during the king's pleasure." The duke, protesting his insufficiency, requested, "that in this present parliament, and by authority thereof, it be enacted, that of yourself and of your ful and mere disposition, ye desire, name and call me to the said name and charge, and that of any presumption of myself, I take them not upon me, but only of the due and humble obeisance that I owe to do unto the king, our most dread and

Duke of York made protector.

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sovereign lord, and to you the peerage of this land, in whom by the occasion of the infirmity of our said sovereign lord resteth the exercise of his authority, whose noble commandments I am as ready to perform and obey, as any his liegeman alive, and that at such time as it shall please our blessed Creator to restore his most noble person to healthful disposition, it shall like you so to declare and notify to his good grace." To this protestation the lords answered, that for his and their discharge, an act of parliament should be made, conformably to that enacted in the king's infancy, since they were compelled by an equal necessity again to chuse and name a protector and defender. And to the duke of York's request to be informed how far the power and authority of his charge should extend, they replied, that he should be chief of the king's council, and "devised therefore to the said duke a name different from other counsellors, not the name of tutor, lieutenant, governor, nor of regent, nor no name that shall import authority of governance of the land; but the said name of protector and defensor;" and so forth, according to the language of their former address to the duke of Glocester. An act was passed accordingly, constituting the duke of York protector of the church and kingdom, and chief counsellor of the king during the latter's pleasure; or until the prince of Wales should attain years of discretion, on whom the said dignity was immediately to devolve. The patronage of certain spiritual benefices was reserved to the protector, according

to the precedent of the king's minority, which parliament was resolved to follow in every particular.*

It may be conjectured, by the provision made in favour of the prince of Wales, then only two years old, that the king's condition was supposed to be beyond hope of restoration. But in about nine months, he recovered sufficient speech and recollection to supersede the duke of York's protectorate.† The succeeding transactions are matter of familiar though not, perhaps, very perspicuous history. The king was a prisoner in his enemies hands after the affair at St. Albans,‡ when parliament met in July 1455. In this session little was done, except renewing the strongest oaths of allegiance to Henry and his family. But the two houses meeting again after a prorogation to November 12, during which time the duke of York had strengthened his party, and was appointed by commission the king's lieutenant to open the parliament, a proposition was made by the commons, that "whereas the king had deputed

* Rot. Parl. vol. v. p. 241.

† Paston Letters, vol. i. p. 81. The proofs of sound mind given in this letter are not very decisive, but the wits of sovereigns are never weighed in golden scales.

‡ This may seem an improper appellation for what is usually termed a battle, wherein 5000 men are said to have fallen. But I rely here upon my faithful guide, the Paston Letters, p. 100. one of which, written immediately after the engagement, says that only six score were killed. Surely this testimony outweighs a thousand ordinary chroniclers. And the nature of the action, which was a sudden attack on the town of St. Albans, without any pitched combat, renders the larger number improbable. Whethamstede, himself abbot of St. Albans at the time, makes the duke of York's army but 3000 fighting men. p. 352.

the duke of York as his commissioner to proceed in this parliament, it was thought by the commons, that if the king hereafter could not attend to the protection of the country, an able person should be appointed protector, to whom they might have recourse for redress of injuries; especially as great disturbances had lately arisen in the west between the earl of Devonshire and lord Bonvile.* The archbishop of Canterbury answered for the lords, that they would take into consideration what the commons had suggested. Two days afterwards, the latter appeared again with a request conveyed nearly in the same terms. Upon their leaving the chamber, the archbishop, who was also chancellor, moved the peers to answer what should be done in respect of the request of the commons; adding that "it is understood, that they will not further proceed in matters of parliament, to the time that they have answer of their desire and request." This naturally ended in the re-appointment of the duke of York to his charge of protector. The commons indeed were determined to bear no delay. As if ignorant of what had been resolved in consequence of their second request, they urged it a third time, on the next day of meeting; and received for answer that "the king our said sovereign lord, by the advice and assent of his lords spiritual and temporal being in this present parliament, had named and desired the duke of York to be pro-

* See some account of these in Paston Letters, vol. i. p. 114.

tector and defensor of this land." It is worthy of notice, that in these words, and indeed in effect, as appears by the whole transaction, the house of peers assumed an exclusive right of chusing the protector, though in the act passed to ratify their election, the commons' assent, as a matter of course, is introduced. The last year's precedent was followed in the present instance, excepting a remarkable deviation; instead of the words "during the king's pleasure," the duke was to hold his office "until he should be discharged of it by the lords in parliament."*

This extraordinary clause, and the slight allegations on which it was thought fit to substitute a vicegerent for the reigning monarch, are sufficient to prove, even if the common historians were silent, that whatever passed as to this second protectorate of the duke of York was altogether of a revolutionary complexion. In the actual circumstances of civil blood already spilled and the king in captivity, we may justly wonder that so much regard was shewn to the regular forms and precedents of the constitution. But the duke's natural moderation will account for part of this, and the temper of the lords for much more. That assembly appears for the most part to have been faithfully attached to the house of Lancaster. The partizans of Richard were found in the commons, and among the populace. Several months elapsed after the victory at St. Albans, before an attempt

* Rot. Parl. vol. v. p. 284—290.

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was thus made to set aside a sovereign, not labouring, so far as we know, under any more notorious infirmity than before. It then originated in the commons, and seems to have received but an unwilling consent from the upper house. Even in constituting the duke of York protector over the head of Henry, whom all men despaired of ever seeing in a state to face the dangers of such a season, the lords did not forget the rights of his son. By this latter instrument, as well as by that of the preceding year, the duke's office was to cease upon the prince of Wales arriving at the age of discretion.

Duke of York's claim to the crown.

But what had long been propagated in secret, soon became familiar to the public ear; that the duke of York laid claim to the throne. He was unquestionably heir general of the royal line; through his mother, Anne, daughter of Roger Mortimer earl of March, son of Philippa, daughter of Lionel duke of Clarence, third son of Edward III. Roger Mortimer's eldest son, Edmund, had been declared heir presumptive by Richard II.; but his infancy during the revolution that placed Henry IV. on the throne had caused his pretensions to be passed over in silence. The new king however was induced by a jealousy natural to his situation to detain the earl of March in custody. Henry V. restored his liberty; and, though he had certainly connived for a while at the conspiracy planned by his brother-in-law the earl of Cambridge and lord Scrop of Masham to place the crown on his head, that magnanimous

prince gave him a free pardon, and never testified any displeasure. The present duke of York was honoured by Henry VI. with the highest trusts in France and Ireland; such as Beaufort and Glocester could never have dreamed of conferring on him, if his title to the crown had not been reckoned obsolete. It has been very pertinently remarked; that the crime perpetrated by Margaret and her counsellors in the death of the duke of Glocester was the destruction of the house of Lancaster.* From this time the duke of York, next heir in presumption while the king was childless, might innocently contemplate the prospect of royalty; and when such ideas had long been passing through his mind, we may judge how reluctantly the birth of Prince Edward, nine years after Henry's marriage, would be admitted to disturb them. The queen's administration unpopular, careless of national interests, and partial to his inveterate enemy, the duke of Somerset;† the king incapable of exciting fear or respect; his own consciousness of powerful alliances and universal favour; all these combined could hardly fail to nourish these opinions of hereditary right, which he must have imbibed from his infancy.

The duke of York preserved through the critical season of rebellion such moderation and humanity, that we may pardon him that bias in favour of his own pretensions, to which he be-

* Hall, p. 210.

† The ill-will of York and the queen began as early as 1449, as we learn from an unequivocal testimony, a letter of that date in the Paston collection, vol. i. p. 26.

came himself a victim. Margaret perhaps, by her sanguinary violence in the Coventry parliament of 1460, where the duke and all his adherents were attainted, left him not the choice of remaining a subject with impunity. But with us, who are to weigh these ancient factions in the balance of wisdom and justice, there should be no hesitation in deciding, that the house of Lancaster were lawful sovereigns of England. I am indeed astonished, that not only such historians as Carte, who wrote undisguisedly upon a Jacobite system, but even men of juster principles have been inadvertent enough to mention the right of the house of York.. If the original consent of the nation, if three descents of the crown, if repeated acts of parliament, if oaths of allegiance from the whole kingdom, and more particularly from those who now advanced a contrary pretension, if undisturbed, unquestioned possession during sixty years, could not secure the reigning family against a mere defect in their genealogy, when were the people to expect tranquillity? Sceptres were committed, and governments were instituted, for public protection and public happiness, not certainly for the benefit of rulers, or for the security of particular dynasties. No prejudice has less in its favour, and none has been more fatal to the peace of mankind, than that which regards a nation of subjects as a family's private inheritance. For, as this opinion induces reigning princes and their courtiers to look on the people as made only to obey them, so when the tide of

events has swept them from their thrones, it begets a fond hope of restoration, a sense of injury and of imprescriptible rights, which give the shew of justice to fresh disturbances of public order, and rebellions against established authority. Even in cases of unjust conquest, which are far stronger than any domestic revolution, time heals the injury of wounded independence, the forced submission to a victorious enemy is changed into spontaneous allegiance to a sovereign, and the laws of God and nature injoin the obedience that is challenged by reciprocal benefits. But far more does every national government, however violent in its origin, become legitimate, when universally obeyed and justly exercised, the possession drawing after it the right; not certainly that success can alter the moral character of actions, or privilege usurpation before the tribunal of human opinion, or in the pages of history, but that the recognition of a government by the people is the binding pledge of their allegiance so long as its corresponding duties are fulfilled.* And thus the law of England, even under the statute of treasons, has been held to annex the subject's fidelity to the reigning monarch, by whatever title he may have ascended the throne, and whoever else may be its claimant.† But the statute of 11th of

* Upon this great question the fourth discourse in Sir Michael Foster's Reports ought particularly to be read. Strange doctrines have been revived lately; and though not exactly referred to the constitution of this country, yet, as general principles, easily applicable to it; which, a century since, would have tended to shake the present family in the throne.

† Hale's Pleas of the crown, vol. i. p. 61. 101. (edit. 1736.)

Henry VII. c. 1. has furnished an unequivocal commentary upon this principle; when, alluding to the condemnations and forfeitures by which those alternate successes of the white and red roses had almost exhausted the noble blood of England, it enacts that "no man for doing true and faithful service to the king for the time being, be convict or attaint of high treason, nor of other offences, by act of parliament or otherwise."

War of the Lancastrians and Yorkists.

Though all classes of men and all parts of England were divided into factions by this unhappy contest, yet the strength of the Yorkists lay in London and the neighbouring counties, and generally among the middling and lower people. And this is what might naturally be expected. For notions of hereditary right take easy hold of the populace, who feel an honest sympathy for those whom they consider as injured; while men of noble birth and high station have a keener sense of personal duty to their sovereign, and of the baseness of deserting their allegiance. Notwithstanding the wide-spreading influence of the Nevils, most of the nobility were well affected to the reigning dynasty. We have seen how reluctantly they acquiesced in the second protectorate of the duke of York, after the battle of St. Albans. Thirty-two temporal peers took an oath of fealty to Henry and his issue in the Coventry parliament of 1460, which attainted the duke of York and the earls of Warwick and Salisbury.* And, in

* Rot. Parl. vol. v. p. 351.

the memorable circumstances of the duke's claim personally made in parliament, it seems manifest, that the lords complied not only with hesitation, but unwillingness; and in fact testified their respect and duty for Henry by confirming the crown to him during his life.* The rose of Lancaster blushed upon the banners of the Staffords, the Percies, the Veres, the Hollands, and the Courtneys. All these illustrious families lay crushed for a time under the ruins of their party. But the course of fortune, which has too great a mastery over crowns and sceptres to be controuled by men's affection, invested Edward IV. with a possession, which the general consent of the nation both sanctioned and secured. This was effected in no slight degree by the furious spirit of Margaret, who began a system of extermination by acts of attainder, and execution of prisoners, that created abhorrence, though it did not prevent imitation. And the barbarities of her northern army, whom she led towards London after the battle of Wakefield, lost the Lancastrian cause its former friends,† and might justly convince reflect-

* Rot. Parl. p. 375. This entry in the roll is highly interesting and important. It ought to be read in preference to any of our historians. Hume, who drew from inferior sources, is not altogether accurate. Yet one remarkable circumstance, told by Hall and other chroniclers, that the duke of York stood by the throne, as if to claim it, though omitted entirely in the roll, is confirmed by Whethamstede, abbot of St. Albans, who was probably then present. (p. 434. edit. Hearne.) This shews that we should only doubt and not reject, unless upon real grounds of suspicion, the assertions of secondary writers.

† The abbey of St. Albans was stripped by the queen and her army after the second battle fought at that place, Feb. 17, 1461; which changed Whethamstede the

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ing men, that it were better to risk the chances of a new dynasty, than trust the kingdom to an exasperated faction.

Edward IV.

A period of obscurity and confusion ensues, during which we have as little insight into constitutional as general history. There are no contemporary chroniclers of any value, and the rolls of parliament, by whose light we have hitherto steered, become mere registers of private bills, or of petitions relating to commerce. The reign of Edward IV. is the first during which no statute was passed for the redress of grievances, or maintenance of the subject's liberty: Nor is there, if I am correct, a single petition of this nature upon the roll. Whether it were that the commons had lost too much of their ancient courage to present any remonstrances, or that a wilful omission has vitiated the record, is hard to determine; but we certainly must not imagine that a government cemented with blood poured on the scaffold as well as in the field, under a passionate and unprincipled sovereign, would afford no scope for the just animadversion of parliament.* The reign of Edward IV. was a reign of terror. One half

abbot and historiographer from a violent Lancastrian into a Yorkist. His change of party is quite sudden, and amusing enough. See too the Paston Letters, vol. i. p. 206. Yet the Paston family were originally Lancastrian, and returned to that side in 1470.

* There are several instances of violence and oppression apparent on the rolls during this reign, but not proceeding from the crown. One of a remarkable nature, vol. v. p. 173. was brought forward to throw an odium on the duke of Clarence, who had been concerned in it. Several passages indicate the character of the duke of Glocester.

of the noble families had been thinned by proscription; and though generally restored in blood by the reversal of their attainders, a measure certainly deserving of much approbation, were still under the eyes of vigilant and inveterate enemies. The opposite faction would be cautious how they resisted a king of their own creation, while the hopes of their adversaries were only dormant. And indeed, without relying on this supposition, it is commonly seen, that when temporary circumstances have given a king the means of acting in disregard of his subjects' privileges, it is a very difficult undertaking for them to recover a liberty, which has no security so effectual as habitual possession.

Besides the severe proceedings against the Lancastrian party, which might be extenuatad by the common pretences, retaliation of similar proscriptions, security for the actual government, or just punishment of rebellion against a legitimate heir, there are several reputed instances of violence and barbarity in the reign of Edward IV., which have not such plausible excuses. Every one knows the common stories of the citizen who was attainted of treason for an idle speech that he would make his son heir to the crown, the house where he dwelt; and of Thomas Burdett, who wished the horns of his stag in the belly of him who had advised the king to shoot it. Of the former I can assert nothing, though I do not believe it to be accurately reported. But certainly the accusation against Burdett, however ini-

quitous, was not confined to these frivolous words; which indeed do not appear in his indictment,* or in a passage relative to his conviction in the roll of parliament. Burdett was a servant and friend of the duke of Clarence, and sacrificed as a preliminary victim. It was an article of charge against Clarence that he had attempted to persuade the people that "Thomas Burdett his servant, which was lawfully and truly attainted of treason, was wrongfully put to death."† There could indeed be no more oppressive usage inflicted upon meaner persons, than this attainder of the duke of Clarence, an act for which a brother could not be pardoned, had he been guilty; and which deepens the shadow of a tyrannical age, if, as it seems, his offence towards Edward was but levity and rashness.

But whatever acts of injustice we may attribute, from authority or conjecture, to Edward's government, it was very far from being unpopular. His love of pleasure, his affability, his courage and beauty, gave him a credit with his subjects, which he had no real virtues to challenge. This restored him to the throne, even against the prodigious

* See in Cro. Car. 120. the indictment against Burdett for compassing the king's death, and for that purpose conspiring with Stacie and Blake to calculate his nativity and his son's, ad sciendum quando iidem rex et Edwardus ejus filius morientur: Also for the same end dispersing divers rhymes and ballads de murmurationibus seditionibus et proditoriis excitationibus, factas et fabricatas apud Holbourn, to the intent that the people might withdraw their love from the king and desert him, ac erga ipsum regem insurgerent, et guerram erga ipsum regem levarent, ad finalem destructionem ipsorum regis ac domini principis, &c.

† Rot. Parl. vol. vi. p. 193.

influence of Warwick, and compelled Henry VII. to treat his memory with respect, and acknowledge him as a lawful king.* The latter years of his reign were passed in repose at home after scenes of unparallelled convulsions, and in peace abroad,

* The rolls of Henry VII.'s first parliament are full of an absurd confusion in thought and language, which is rendered odious by the purposes to which it is applied. Both Henry VI. and Edward IV. are considered as lawful kings; except in one instance, where Alan Cotterell, petitioning for the reversal of his attainder, speaks of Edward "late called Edward IV." (vol. vi. p. 290.) But this is only the language of a private Lancastrian. And Henry VI. passes for having been king during his short restoration in 1470, when Edward had been nine years upon the throne. For the earl of Oxford is said to have been attainted "for the true allegiance and service he owed and did to Henry VI., at Barnet field and otherwise." (p. 281.) This might be reasonable enough on the true principle, that allegiance is due to a king *de facto;* if indeed we could determine who was the king de facto on the morning of the battle of Barnet. But this principle was not fairly recognized. Richard III. is always called, "in deed and not in right king of England." Nor was this merely founded on his usurpation as against his nephew. For that unfortunate boy is little better treated, and in the act of resumption, 1 H. VII., while Edward IV. is styled "late king," appears only with the denomination of "Edward his son, late called Edward V." p. 336. Who then was king after the death of Edward IV.? And was his son really illegitimate, as an usurping uncle pretended? Or did the crime of Richard, though punished in him, enure to the benefit of Henry? These were points, which, like the fate of the young princes in the Tower, he chose to wrap in discreet silence. But the first question he seems to have answered in his own favour. For Richard himself, Howard duke of Norfolk, lord Lovel, and some others, are attainted, (p. 276.) for 'traiterously intending, compassing and imagining' the death of Henry; of course before or at the battle of Bosworth; and while his right, unsupported by possession, could have rested only on an hereditary title, which it was an insult to the nation to prefer. These monstrous proceedings explain the necessity of that conservative statute to which I have already alluded, which passed in the eleventh year of his reign, and afforded as much security for men following the plain line of rallying round the standard of their country as mere law can offer. It did not indeed protect Sir Henry Vane against a sophistical interpretation by that corrupt tool, Chief Justice Kelynge. There is some extraordinary reasoning upon this act in Carte's History, vol. ii. p. 844. for the purpose of proving, that the adherents of George II. would not be protected by it on the restoration of the true blood.

after more than a century of expensive warfare. His demands of subsidy were therefore moderate, and easily defrayed by a nation who were making rapid advances towards opulence. According to Sir John Fortescue, nearly one-fifth of the whole kingdom had come to the king's hand by forfeiture, at some time or other since the commencement of his reign.* Many indeed of these lands had been restored, and others lavished away in grants, but the surplus revenue must still have been considerable.

Edward IV. was the first who practised a new method of taking his subjects' money without consent of parliament, under the plausible name of benevolences. These came in place of the still more plausible loans of former monarchs, and were principally levied on the wealthy traders. Though no complaint appears in the parliamentary records of his reign, which, as has been observed, complain of nothing, the illegality was undoubtedly felt and resented. In the remarkable address to Richard by that tumultuary meeting which invited him to assume the crown, we find, among general assertions of the state's decay through misgovernment, the following strong passage: "For certainly we be determined rather to aventure and committe us to the perill of owre lyfs and jopardie of deth, than to lyve in such thraldome and bondage as we have lyved long tyme heretofore oppressed and injured by extortions and newe impositions, ayenst

* Difference of Absolute and Limited Monarchy, p. 83.

the lawes of God and man, and the libertie, old policie, and lawes of this realme, whereyn every Englishman is inherited."* Accordingly in Richard III.'s only parliament, an act was passed, which, after reciting in the strongest terms the grievances lately endured, abrogates and annuls for ever all exactions under the name of benevolence.† The liberties of this country were at least not directly impaired by the usurpation of Richard. But from an act so deeply tainted with moral guilt, as well as so violent in all its circumstances, no substantial benefit was likely to spring. Whatever difficulty there may be, and I confess it is not easy to be surmounted, in deciding upon the fate of Richard's nephews after they were immured in the Tower, the more public parts of the transaction bear unequivocal testimony to his ambitious usurpation. It would therefore be foreign to the purpose of this chapter to dwell upon his assumption of the regency, or upon the sort of election, however curious and remarkable, which gave a pretended authority to his usurpation of the throne. Neither of these has ever been alledged by any party in the way of constitutional precedent.

Conclusion.

At this epoch I terminate these inquiries into the English constitution; a sketch very imperfect I fear and unsatisfactory, but which may at least answer the purpose of fixing the reader's attention on the principal objects, and of guiding him to the purest fountains of constitutional knowledge.

* Rot. Parl. vol. vi. p. 241. † 1 R. III. c. 2.

From the accession of the house of Tudor a new period is to be dated in our history; far more prosperous in the diffusion of opulence, and the preservation of general order, than the preceding, but less distinguished by the spirit of freedom and jealousy of tyrannical power. We have seen, through the twilight of our Anglo-Saxon records, a form of civil polity established by our ancestors; marked, like the kindred governments of the continent, with aboriginal Teutonic features; barbarous indeed, and insufficient for the great ends of society, but capable and worthy of the improvement it has received, because actuated by a sound and vital spirit, the love of freedom and of justice. From these principles arose that venerable institution, which none but a free and simple people could have conceived, trial by peers; an institution common in some degree to other nations, but which, more widely extended, more strictly retained, and better modified among ourselves, has become perhaps the first, certainly among the first, of our securities against arbitrary government. We have seen a foreign conqueror and his descendants trample almost alike upon the prostrate nation, and upon those who had been companions of their victory, introduce the servitudes of feudal law with more than their usual rigour, and establish a large revenue by continual precedents upon a system of universal and prescriptive extortion. But the Norman and English races, each unfit to endure oppression, forgetting their animosities in a common interest, enforce by arms the

concession of a great charter of liberties. Privileges, wrested from one faithless monarch, are preserved with continual vigilance against the machinations of another; the rights of the people become more precise, and their spirit more magnanimous during the long reign of Henry III. With greater ambition and greater abilities than his father, Edward I. attempts in vain to govern in an arbitrary manner, and has the mortification of seeing his prerogative fettered by still more important limitations. The great council of the nation is opened to the representatives of the commons. They proceed by slow and cautious steps to remonstrate against public grievances, to check the abuses of administration, and sometimes to chastise public delinquency in the officers of the crown. A number of remedial provisions are added to the statutes; every Englishman learns to remember that he is the citizen of a free state, and to claim the common law as his birthright, even though the violence of power should interrupt its enjoyment. It were a strange misrepresentation of history to assert, that the constitution had attained any thing like a perfect state in the fifteenth century; but I know not whether there are any essential privileges of our countrymen, any fundamental securities against arbitrary power, so far as they depend upon positive institution, which may not be traced to the time when the house of Plantagenet filled the English throne.

CHAPTER IX.

ON THE STATE OF SOCIETY IN EUROPE DURING THE MIDDLE AGES.

PART I.

Introduction—Decline of Literature in the latter period of the Roman Empire—its Causes—Corruption of the Latin Language —Means by which it was effected—Formation of new Languages —General Ignorance of the Dark Ages—Scarcity of Books— —Causes that prevented the total extinction of Learning—Prevalence of Superstition and Fanaticism—General Corruption of Religion—Monasteries—their Effects—Pilgrimages—Love of Field Sports—State of Agriculture—of Internal and Foreign Trade down to the End of the Eleventh Century—Improvement of Europe dated from that Age.

It has been the object of every preceding chapter of this work, either to trace the civil revolutions of states during the period of the middle ages, or to investigate, with rather more minute attention, their political institutions. There remains a large tract to be explored, if we would complete the circle of historical information, and give to our knowledge that copiousness and clear perception, which arise from comprehending a subject under

numerous relations. The philosophy of history embraces far more than the wars and treaties, the factions and cabals of common political narration; it extends to whatever illustrates the character of the human species in a particular period, to their reasonings and sentiments, their arts and industry. Nor is this comprehensive survey merely interesting to the speculative philosopher; without it, the statesman would form very erroneous estimates of events, and find himself constantly misled in any analogical application of them to present circumstances. Nor is it an uncommon fallacy to neglect the general signs of the times, and to deduce a prognostic from some partial coincidence with past events, where a more enlarged comparison of all the facts that ought to enter into the combination would destroy the whole parallel. The philosophical student, however, will not follow the antiquary into his minute details; and though it is hard to say what may not supply matter for a reflecting mind, there is always some danger of losing sight of grand objects in historical disquisition, by too laborious a research into trifles. I may possibly be thought to furnish, in some instances, an example of the error I condemn. But in the choice and disposition of topics to which the present chapter relates, some have been omitted on account of their comparative insignificance, and others on account of their want of connexion with the leading subject. Even of those treated I can only undertake to give a transient view; and must bespeak the reader's can-

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dour to remember, that passages which, separately taken, may often appear superficial, are but parts of the context of a single chapter, as the chapter itself is of an entire work.

The Middle Ages, according to the division I have adopted, comprize about one thousand years, from the invasion of France by Clovis to that of Naples by Charles VIII. This period, considered as to the state of society, has been esteemed dark through ignorance, and barbarous through poverty and want of refinement. And although this character is much less applicable to the two last centuries of the period, than to those which preceded its commencement, yet we cannot expect to feel in respect of ages at best imperfectly civilized and slowly progressive, that interest which attends a more perfect development of human capacities, and more brilliant advances in improvement. The first moiety indeed of these ten ages is almost absolutely barren, and presents little but a catalogue of evils. The subversion of the Roman empire, and devastation of its provinces by barbarous nations, either immediately preceded, or were coincident with the commencement of the middle period. We begin in darkness and calamity; and, though the shadows grow fainter as we advance, yet we are to break off our pursuit as the morning breathes upon us, and the twilight reddens into the lustre of day.

Decline of learning in Roman empire.

No circumstance is so prominent on the first survey of society during the earlier centuries of this period as the depth of ignorance in which it

was immersed; and as from this, more than any single cause, the moral and social evils which those ages experienced appear to have been derived and perpetuated, it deserves to occupy the first place in the arrangement of our present subject. We must not altogether ascribe the ruin of literature to the barbarian destroyers of the Roman empire. So gradual and, apparently, so irretrievable a decay had long before spread over all liberal studies, that it is impossible to pronounce whether they would not have been almost equally extinguished, if the august throne of the Cæsars had been left to moulder by its intrinsic weakness. Under the paternal sovereignty of Marcus Aurelius, the approaching declension of learning might be scarcely perceptible to an incurious observer. There was much indeed to distinguish his times from those of Augustus; much lost in originality of genius, in correctness of taste, in the masterly conception and consummate finish of art, in purity of the Latin, and even of the Greek language. But there were men who made the age famous, grave lawyers, judicious historians, wise philosophers; the name of learning was honourable, its professors were encouraged; and along the vast surface of the Roman empire there was perhaps a greater number, whose minds were cultivated by intellectual discipline, than under the more brilliant reign of the first emperor.

its causes.

It is not, I think, very easy to give a perfectly satisfactory solution of the rapid downfall of literature between the ages of Antonine and of

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Diocletian. Perhaps the prosperous condition of the empire from Trajan to Marcus Aurelius, and the patronage which those good princes bestowed on letters, gave an artificial health to them, for a moment, and suspended the operation of a disease which had already begun to undermine their vigour. Perhaps the intellectual energies of mankind can never remain stationary; and a nation that ceases to produce original and inventive minds, born to advance the land-marks of knowledge or skill, will recede from step to step, till it loses even the secondary merits of imitation and industry. During the third century, not only there were no great writers, but even few names of indifferent writers have been recovered by the diligence of modern inquiry.* Law neglected, philosophy perverted till it became contemptible, history nearly silent, the latin tongue growing rapidly barbarous, poetry rarely and feebly attempted, art more and more vitiated; such were the symptoms by which the age previous to Constantine announced the decline of human intellect. If we cannot fully account for this unhappy change, as I have observed, we must, however assign much weight to the degradation of Rome and Italy in the system of Severus and his successors, to the admission of barbarians into the

* The authors of Histoire Littéraire de la France, t. i. can only find three writers of Gaul, no inconsiderable part of the Roman empire, mentioned upon any authority; two of whom are now lost. In the preceding century the number was considerably greater.

military and even civil dignities of the empire, to the discouraging influence of provincial and illiterate sovereigns, and to the calamities which followed for half a century the first invasion of the Goths and the defeat of Decius. To this sickly condition of literature the fourth century supplied no permanent remedy. If under the house of Constantine the Roman world suffered rather less from civil warfare or barbarous invasions, than in the preceding age, yet every other cause of decline just enumerated prevailed with aggravated force; and the fourth century set in storms, sufficiently destructive in themselves, and ominous of those calamities which humbled the majesty of Rome at the commencement of the ensuing period, and overwhelmed the western empire in absolute and final ruin before its termination.

The diffusion of literature is perfectly distinguishable from its advancement, and whatever obscurity we may find in explaining the variations of the one, there are a few simple causes which seem to account for the other. Knowledge will be spread over the surface of a nation in proportion to the facilities of education, to the free circulation of books, to the emoluments and distinctions which literary attainments are found to produce, and still more to the reward which they meet in the general respect and applause of society. This cheering incitement, the genial sunshine of approbation, has at all times promoted the cultivation of literature in small republics, rather than large empires, and in cities com-

pared with the country. If these are the sources which nourish literature, we should naturally expect that they must have become scanty or dry, when learning languishes or expires. Accordingly in the later ages of the Roman empire, a general indifference towards the cultivation of letters became the characteristic of its inhabitants. Laws were indeed enacted by Constantine, Julian, Theodosius, and other emperors, for the encouragement of learned men and the promotion of liberal education. But these laws, which would not perhaps have been thought necessary in better times, were unavailing to counteract the lethargy of ignorance in which even the native citizens of the empire were contented to repose. This alienation of men from their national literature may doubtless be imputed, in some measure, to its own demerits. A jargon of mystical philosophy, half fanaticism and half imposture, a barren and inflated eloquence, a frivolous philology, were not among those charms of wisdom, by which man is to be diverted from pleasure or aroused from indolence.

In this temper of the public mind, there was little probability that new compositions of excellence would be produced, and much doubt whether the old would be preserved. Since the invention of printing, the absolute extinction of any considerable work seems a danger too improbable for apprehension. The press pours forth in a few days a thousand volumes, which scattered, like seed in the air, over the republic of Europe, could hardly be destroyed without the extirpation of its

inhabitants. But in the times of antiquity, manuscripts were copied with cost, labour, and delay; and if the diffusion of knowledge be measured by the multiplication of books, no unfair standard, the most golden ages of ancient learning could never bear the least comparison with the three last centuries. The destruction of a few libraries by accidental fire, the desolation of a few provinces by unsparing and illiterate barbarians, might annihilate every vestige of an author, or leave a few scattered copies, which, from the public indifference, there was no inducement to multiply, exposed to similar casualties in succeeding times.

We are warranted by good authorities to assign, as a collateral cause of this irretrievable revolution, the neglect of heathen literature by the Christian church. I am not versed enough in ecclesiastical writers to estimate the degree of this neglect; nor am I disposed to deny that the mischief was beyond recovery before the accession of Constantine. From the primitive ages, however, it seems that a dislike of pagan learning was pretty general among Christians. Many of the fathers undoubtedly were accomplished in liberal studies, and we are indebted to them for valuable fragments of authors whom we have lost. But the literary character of the church is not to be measured by that of its more illustrious leaders. Proscribed and persecuted, the early Christians had not perhaps access to the public schools, nor inclination to studies which seemed, very excusably,

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uncongenial to the character of their profession. Their prejudices however survived the establishment of Christianity. The fourth council of Carthage in 398 prohibited the reading of secular books by bishops. Jerome plainly condemns the study of them, except for pious ends. All physical science, especially, was held in avowed contempt, as inconsistent with revealed truths. Nor do there appear to have been any canons made in favour of learning, or any restriction on the ordination of persons absolutely illiterate.* There was, indeed, abundance of what is called theological learning displayed in the controversies of the fourth and fifth centuries. And those who admire such disputations may consider the principal champions in them as contributing to the glory, or at least retarding the decline, of literature. But I believe rather that polemical disputes will be found not only to corrupt the genuine spirit of religion, but to degrade and contract the faculties. What keenness and subtlety these may sometimes acquire by such exercise is more like that worldly shrewdness we see in men whose trade it is to outwit their neighbours, than the clear and calm discrimination of philosophy. However this may be, it cannot be doubted that the controversies agitated in the church during these two centuries must have

* Mosheim, Cent. 4. Tiraboschi endeavours to elevate higher the learning of the early Christians. t. ii. p. 328. Jortin, however, asserts that many of the bishops in the general councils of Ephesus and Chalcedon could not write their names. Remarks on Ecclesiast. Hist. vol. ii. p. 417.

diverted studious minds from profane literature, and narrowed more and more the circle of that knowledge which they were desirous to attain.

The torrent of irrational superstitions which carried all before it in the fifth century, and the progress of ascetic enthusiasm, had an influence still more decidedly inimical to learning. I cannot indeed conceive any state of society more adverse to the intellectual improvement of mankind, than one which admitted of no middle line between gross dissoluteness and fanatical mortification. An equable tone of public morals, social and humane, verging neither to voluptuousness nor austerity, seems the most adapted to genius, or at least to letters, as it is to individual comfort and national prosperity. After the introduction of monkery and its unsocial theory of duties, the serious and reflecting part of mankind, on whom science mostly relies, were turned to habits which, in the most favourable view, could not quicken the intellectual energies; and it might be a difficult question, whether the cultivators and admirers of useful literature were less likely to be found among the profligate citizens of Rome and their barbarian conquerors, or the melancholy recluses of the wilderness.

Such therefore was the state of learning before the subversion of the Western Empire. And we may form some notion how little probability there was of its producing any excellent fruits, even if that revolution had never occurred, by considering what took place in Greece during the subsequent

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ages; where, although there was some attention shewn to preserve the best monuments of antiquity, and diligence in compiling from them, yet no one original writer of any superior merit arose, and learning, though plunged but for a short period into mere darkness, may be said to have languished in a middle region of twilight for the greater part of a thousand years.

But, not, to delay ourselves in this speculation, the final settlement of barbarous nations in Gaul, Spain, and Italy consummated the ruin of literature. Their first irruptions were uniformly attended with devastation; and if some of the Gothic kings, after their establishment, proved humane and civilized sovereigns, yet the nation gloried in its original rudeness, and viewed with no reasonable disdain arts which had neither preserved their cultivators from corruption, nor raised them from servitude. Theodoric, the most famous of the Ostrogoth kings in Italy, could not write his name, and is said to have restrained his countrymen from attending those schools of learning, by which he, or rather perhaps his minister Cassiodorus, endeavoured to revive the studies of his Italian subjects. Scarcely one of the barbarians, so long as they continued unconfused with the native inhabitants, acquired the slightest tincture of letters; and the praise of equal ignorance was soon aspired to and attained by the entire mass of the Roman laity. They, however, could hardly have divested themselves so completely of all acquaintance with even the

elements of learning, if the language, in which books were written, had not ceased to be their natural dialect. This remarkable change in the speech of France, Spain and Italy, is most intimately connected with the extinction of learning; and there is enough of obscurity, as well as of interest, in the subject, to deserve some discussion.

Corruption of the Latin language.

It is obvious, on the most cursory view of the French and Spanish languages, that they, as well as the Italian, are derived from one common source, the Latin. That must therefore have been at some period, and certainly not since the establishment of the barbarous nations in Spain and Gaul, substituted in ordinary use for the original dialects of those countries, which are generally supposed to have been Celtic, not essentially differing from that which is spoken in Wales and Ireland. Rome, says Augustin, imposed not only her yoke, but her language upon conquered nations. The success of such an attempt is indeed very remarkable. Though it is the natural effect of conquest, or even of commercial intercourse, to ingraft fresh words and foreign idioms on the stock of the original language, yet the entire disuse of the latter, and adoption of one radically different, scarcely takes place in the lapse of a far longer period than that of the Roman dominion in Gaul. Thus, in part of Britany, the people speak a language which has perhaps sustained no essential alteration from the revolution of two thousand years; and we know how steadily

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another Celtic dialect has kept its ground in Wales, notwithstanding English laws and government, and the long line of contiguous frontier which brings the natives of that principality into contact with Englishmen. Nor did the Romans ever establish their language, I know not whether they wished to do so, in this island, as we perceive by that stubborn British tongue which has survived two conquests.*

In Gaul and in Spain, however, they did succeed, as the present state of the French and peninsular languages renders undeniable, though by gradual changes, and not, as the Benedictine authors of the Histoire Littéraire de la France seem to imagine, by a sudden and arbitrary innovation:† This is neither possible in itself, nor agreeable to the testimony of Irenæus, bishop of Lyons at the end of the second century, who laments the necessity of learning Celtic.‡ But, although the inhabitants of these provinces came

* Gibbon roundly asserts, that "the language of Virgil and Cicero, though with some inevitable mixture of corruption, was so universally adopted in Africa, Spain, Gaul, Great Britain, and Pannonia, that the faint traces of the Punic or Celtic idioms were preserved only in the mountains, or among the peasants." Decline and Fall, vol. i. p. 60. (8vo. edit.) For Britain he quotes Tacitus's Life of Agricola as his voucher. But the only passage in this work that gives the least colour to Gibbon's assertion is one in which Agricola is said to have encouraged the children of British chieftains to acquire a taste for liberal studies, and to have succeeded so much by judicious commendation of their abilities, ut qui modo linguam Romanam abnuebant, eloquentiam concupiscerent. (c. 21.) This, it is sufficiently obvious, is very different from the national adoption of Latin as a mother-tongue.

† t. vii. préface.

‡ It appears, by a passage quoted from the digest by M. Bonamy, Mém. de l'Acad. des Inscriptions, t. xxiv. p. 589. that Celtic was spoken in Gaul, or at least parts of it, as well as Punic in Africa.

at length to make use of Latin so completely as their mother-tongue, that few vestiges of their original Celtic could perhaps be discovered in their common speech, it does not follow that they spoke with the pure pronunciation of Italians, far less with that conformity to the written sounds, which we assume to be essential to the expression of Latin words.

Ancient Latin pronunciation.

It appears to be taken for granted, that the Romans pronounced their language as we do at present, so far at least as the enunciation of all the consonants, however we may admit our deviations from the classical standard, in propriety of sounds, and in measure of time. Yet the example of our own language, and of French, might shew us that orthography may become a very inadequate representative of pronunciation. It is indeed capable of proof, that in the purest ages of Latinity, some variation existed between these two. Those numerous changes in spelling which distinguish the same words in the poetry of Ennius and of Virgil are best explained by the supposition of their being accommodated to the current pronunciation. Harsh combinations of letters, softened down through delicacy of ear, or rapidity of utterance, gradually lost their place in the written language. Thus *exfregit* and *adrogavit* assumed a form representing their more liquid sound; and *auctor* was latterly spelled *autor*, which has been followed in French and Italian. *Autor* was probably so pronounced at all times; and the orthography was afterwards corrected or corrupted,

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which ever we please to say, according to the sound. We have the best authority to assert, that the final *m* was very faintly pronounced, rather, it seems, as a rest and short interval between two syllables, than an articulate letter; nor indeed can we conceive upon what other ground it was subject to elision before a vowel in verse; since we cannot suppose that the nice ears of Rome would have submitted to a capricious rule of poetry, for which Greece presented no analogy.*

A decisive proof, in my opinion, of the deviation which took place, through the rapidity of ordinary elocution, from the strict laws of enunciation, may be found in the metre of Terence. His verses, which are absolutely refractory to the common laws of prosody, may be readily scanned by the application of this principle. Thus, in the first act of the Heautontimorumenos, a part selected at random, I have found, I. Vowels contracted or dropped, so as to shorten the word by a syllable; in *rei, diâ, diutius, ei, solius, eam, unius, suam, divitias, senex, voluptatem, illius, semel;* II. The proceleusmatic foot, or four short syllables, instead of the dactyl; scen. i. v. 59. 73. 76. 88. 109. scen. ii. v. 36; III. The elision of *s* in words ending with *us*, or *is* short, and sometimes even of the

* Atqui eadem illa litera, quoties ultima est, et vocalem verbi sequentis ita contingit, ut in eam transire possit, etiam si scribitur, tamen parum exprimitur, ut *Multum ille*, et *Quantum erat*: adeo ut pene cujusdam novæ literæ sonum reddat. Neque enim eximitur, sed obscuratur, et tantùm aliqua inter duos vocales velut nota est, ne ipsæ coeant. Quintilian, Institut. l. ix. c. 4. p. 595. edit. Capperonier.

whole syllable, before the next word beginning with a vowel; in scen. i. v. 30. 81. 98. 101. 116. 119. scen. ii. v. 28. IV. The first syllable of *ille* is repeatedly shortened, and indeed nothing is more usual in Terence than this licence; whence we may collect how ready this word was for abbreviation into the French and Italian articles. V. The last letter of *apud* is cut off, scen. i. v. 120. and scen. ii. v. 8. VI. *Hodie* is used as a pyrrhichius in scen. ii. v. 11. VII. Lastly, there is a clear instance of a short syllable, the antepenultimate of *impulerim*, lengthened on account of the accent, at the 118th verse of the first scene.

Its corruption by the populace

These licences are in all probability chiefly colloquial, and would not have been adopted in public harangues, to which the precepts of rhetorical writers commonly relate. But if the more elegant language of the Romans, since such we must suppose to have been copied by Terence for his higher characters, differed so much in ordinary discourse from their orthography, it is probable that the vulgar went into much greater deviations. The popular pronunciation errs generally, we might say perhaps invariably, by abbreviation of words, and by liquefying consonants, as is natural to the rapidity of colloquial speech.* It is

* The following passage of Quintilian is an evidence both of the omission of harsh or superfluous letters by the best speakers, and of the corrupt abbreviations usual with the worst. Dilucida vero erit pronunciatio, primum, si verba tota exegerit, quorum pars devorari, pars destitui solet, plerisque extremas syllabas non proferentibus, dum priorum sono indulgent. Ut est autem necessaria verborum explanatio, ita omnes computare et velut adnumerare literas, molestum et odiosum. Nam et vocales frequentissimè co-

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by their knowledge of orthography and etymology, that the more educated part of the community are preserved from these corrupt modes of pronunciation. There is always therefore a standard by which common speech may be rectified; and in proportion to the diffusion of knowledge and politeness, the deviations from it will be more slight and gradual. But in distant provinces, and especially where the language itself is but of recent introduction, many more changes may be expected to occur. Even in France and England, there are provincial dialects, which if written with all their anomalies of pronunciation as well as idiom, would seem strangely out of unison with the regular language; and in Italy, as is well known, the varieties of dialect are still more striking. Now, in an advancing state of society, and especially with such a vigorous political circulation as we now experience in England, language will constantly approximate to uniformity, as provincial expressions are more and more rejected for incorrectness or inelegance. But, where literature is on the decline, and public misfortunes contract the circle of those who are solicitous about refinement, as in the last ages of the Roman empire, there will be no longer any definite standard of living speech, nor any general desire to conform to it, if one could be found; and thus

and the provincials.

eunt, et consonantium quædam insequente vocali dissimulantur; utriusque exemplum posuimus; Multum ille et terris. Vitatur etiam duriorum inter se congressus, unde *pellexit* et *collegit*, et quæ alio loco dicta sunt. l. ii. c. 3. p. 696.

the vicious corruptions of the vulgar will entirely predominate. The niceties of ancient idiom will be totally lost; while new idioms will be formed out of violations of grammar sanctioned by usage, which, among a civilized people, would have been proscribed at their appearance.

Such appears to have been the progress of corruption in the Latin language. The adoption of words from the Teutonic dialects of the barbarians, which took place very freely, would not of itself have destroyed the character of that language, though it sullied its purity. The worst law latin of the middle ages is still Latin, if its barbarous terms have been bent to the regular inflexions. It is possible, on the other hand, to write whole pages of Italian, wherein every word shall be of unequivocal Latin derivation, though the character and personality, if I may so say, of the language be entirely dissimilar. But, as I conceive, the loss of literature took away the only check upon arbitrary pronunciation and upon erroneous grammar. Each people innovated through caprice, imitation of their neighbours, or some of those indescribable causes, which dispose the organs of different nations to different sounds. The French melted down the middle consonants; the Italians omitted the final. Corruptions arising out of ignorance were mingled with those of pronunciation. It would have been marvellous, if illiterate and semi-barbarous provincials had preserved that delicate precision in using the inflexions of tenses, which our best scholars do not

clearly attain. The common speech of any people whose language is highly complicated will be full of solecisms. The French inflexions are not comparable in number or delicacy to the Latin, and yet the vulgar confuse their most ordinary forms.

But, in all probability, the variation of these derivative languages from popular Latin has been considerably less than it appears. In the purest ages of Latinity, the citizens of Rome itself made use of many terms which we deem barbarous, and of many idioms which we should reject as modern. That highly complicated grammar, which the best writers employed, was too elliptical and obscure, too deficient in the connecting parts of speech, for general use. We cannot indeed ascertain in what degree the vulgar Latin differed from that of Cicero or Seneca. It would be highly absurd to imagine, as some are said to have done, that modern Italian was spoken at Rome under Augustus.* But I believe it may be asserted, not only that much the greater part of those words in the present language of Italy, which strike us as incapable of a Latin etymology, are in fact derived from those current in the Augustan age, but that very many phrases which offended nicer ears prevailed in the same vernacular speech, and have passed from thence into the modern French and Italian. Such, for example, was the frequent use

* Tiraboschi (Storia dell. Lett. Ital. t. iii. preface, p. v.) imputes this paradox to Bembo and Quadrio: but I can hardly believe that either of them could maintain it in a literal sense.

of prepositions to indicate a relation between two parts of a sentence which a classical writer would have made to depend on mere inflexion.*

From the difficulty of retaining a right discrimination of tense seems to have proceeded the active auxiliary verb. It is possible that this was borrowed from the Teutonic languages of the barbarians, and accommodated both by them and by the natives to words of Latin origin. The passive auxiliary is obtained by a very ready resolution of any tense in that mood, and has not been altogether dispensed with even in Greek, while in Latin it is used much more frequently. It is not quite so easy to perceive the propriety of the active habeo or teneo, one or both of which all modern languages have adopted as their auxiliaries in conjugating the verb. But in some instances this analysis is proper enough; and it may be supposed that nations, careless of etymology or correctness, applied the same verb by a rude analogy to cases where it ought not strictly to have been employed.†

Next to the changes founded on pronunciation

* M. Bonamy, in an essay printed in Mém. de l'Académie des Inscriptions, t. xxiv. has produced several proofs of this from the classical writers on agriculture and other arts, though some of his instances are not in point, as any schoolboy would tell him.. This essay, which, by some accident, had escaped my notice till I had nearly finished the observations in my text, contains, I think, the best view that I have seen of the process of transition by which Latin was changed into French and Italian. Add, however, the preface to Tiraboschi's third volume and the thirty-second dissertation of Muratori.

† See Lanzi, Saggio della Lingua Etrusca, t. i. p. 431.; Mém. de l'Acad. des Inscript. t. xxiv. p. 638.

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and to the substitution of auxiliary verbs for inflexions, the usage of the definite and indefinite articles in nouns appears the most considerable step in the transmutation of Latin into its derivative languages. None but Latin, I believe, has ever wanted this part of speech; and the defect, to which custom reconciled the Romans, would be an insuperable stumbling-block to nations who were to translate their original idiom into that language. A coarse expedient of applying *unus*, *ipse* or *ille* to the purposes of an article might perhaps be no unfrequent vulgarism of the provincials; and after the Teutonic tribes brought in their own grammar, it was natural that a corruption should become universal, which in fact supplied a real and essential deficiency.

Pronunciation no longer regulated by quantity.

That the quantity of Latin syllables is neglected, or rather lost in modern pronunciation, seems to be generally admitted. Whether indeed the ancient Romans, in their ordinary speaking, distinguished the measure of syllables with such uniform musical accuracy as we imagine, giving a certain time to those termed long, and exactly half that duration to the short, might perhaps be questioned; though this was probably done, or attempted to be done, by every good reader of poetry. Certainly, however, the laws of quantity were forgotten, and an accentual pronunciation came to predominate, before Latin had ceased to be a living language. A Christian writer, named Commodianus, who lived before the end of the third century, according to some, or, as others

think, in the reign of Constantine, has left us a philological curiosity, in a series of attacks on the pagan superstitions, composed in what are meant to be verses, regulated by accent instead of quantity, exactly as we read Virgil at present.*

It is not improbable that Commodianus may have written in Africa, the province in which, more than any, the purity of Latin was debased. At the end of the fourth century, St. Augustin assailed his old enemies, the Donatists, with nearly the same arms that Commodianus had wielded against heathenism. But as the refined and various music of hexameters was unlikely to be relished by the vulgar, he prudently adopted a different measure.† All the nations of Europe

* No description can give so adequate a notion of this extraordinary performance as a short specimen. Take the introductory lines; which really, prejudices of education apart, are by no means inharmonious:

Præfatio nostra viam erranti demonstrat,
Respectumque bonum, cum venerit sæculi meta,
Æternum fieri, quod discredunt inscia corda.
Ego similiter erravi tempore multo,
Fana prosequendo, parentibus insciis ipsis.
Abstuli me tandem inde, legendo de lege.
Testificor Dominum, doleo, proh! civica turba
Inscia quod perdit, pergens deos quærere vanos.
Ob ea perdoctus ignoros instruo verum.

Commodianus however did not keep up to this excellence in every part. Some of his lines are not reducible to any pronunciation, without the summary rules of Procrustes; as for instance—

Paratus ad epulas, et refugiscere præcepta; or, Capillos inficitis, oculos fuligine relinitis.

It must be owned, that his text is exceedingly corrupt, and I should not despair of seeing a truly critical editor nurse his lines into unblemished hexameters. Till this time arrives, however, we must consider him either as utterly ignorant of metrical distinctions, or at least as aware that the populace whom he addressed did not observe them in speaking. Commodianus is published by Dawes at the end of his edition of Minucius Felix. Some specimens are quoted in Harris's Philological Inquiries.

† Archæologia, vol. xiv. p. 188. The following are the first lines:

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seem to love the trochaic verse; it was frequent on the Greek and Roman stage; it is more common than any other in the popular poetry of modern languages. This proceeds from its simplicity, its liveliness, and its ready accommodation to dancing and music. In St. Austin's poem, he united to a trochaic measure the novel attraction of rhyme.

As Africa must have lost all regard to the rules of measure in the fourth century, so it appears that Gaul was not more correct in the two next ages. A poem addressed by Auspicius, bishop of Toul, to Count Arbogastes, of earlier date probably than the invasion of Clovis, is written with no regard to quantity.* The bishop by whom this was composed is mentioned by his contemporaries as a man of learning. Probably he did not chuse to perplex the barbarian to whom he was writing (for Arbogastes is plainly a barbarous name) by legitimate Roman metre. In the next century, Gregory of Tours informs us that Chilperic at-

Abundantia peccatorum solet fratres conturbare;
Propter hoc Dominus noster voluit nos præmonere,
Comparans regnum cœlorum reticulo misso in mare,
Congreganti multos pisces, omne genus hinc et inde,
Quos cum traxissent ad littus, tunc cœperunt separare,
Bonos in vasa miserunt, reliquos malos in mare.

This trash seems below the level of Augustin; but it could not have been much later than his age.

* Recueil des Historiens, t. i. p. 815.; it begins in the following manner:

Præcelso expectabili bis Arbogasto comiti,
Auspicius, qui diligo, salutem dico plurimam.
Magnas cœlesti Domino rependo corde gratias
Quod te Tullensi proxime magnum in urbe vidimus.
Multis me tuis artibus lætificabas antea,
Sed nunc fecisti maximo me exultare gaudio.

tempted to write Latin verses; but the lines could not be reconciled to any division of feet; his ignorance having confounded long and short syllables together.* Now Chilperic must have learned to speak Latin like other kings of the Franks, and was a smatterer in several kinds of literature. If Chilperic therefore was not master of these distinctions, we may conclude that the bishops and other Romans with whom he conversed did not observe them; and that his blunders in versification arose from ignorance of rules, which, however fit to be preserved in poetry, were entirely obsolete in the living Latin of his age. Indeed the frequency of false quantities in the poets even of the fifth, but much more of the sixth century, is palpable. Fortunatus is quite full of them. This seems a decisive proof that the ancient pronunciation was lost. Avitus tells us, even at the beginning of the same age, that few preserved the proper measure of syllables in singing. Yet he was bishop of Vienne, where a purer pronunciation might be expected than in the remoter parts of Gaul.†

Change of Latin into Romance.

Defective, however, as it had become in respect of pronunciation, Latin was still spoken in France during the sixth and seventh centuries. We have compositions of that time, intended for the people,

* Chilpericus rex ..... confecit duos libros, quorum versiculi debiles nullis pedibus subsistere possunt; in quibus, dum non intelligebat, pro longis syllabas breves posuit, et pro brevibus longas statuebat. l. vi. c. 46.

† Mém. de l'Académie des Inscriptions, t. xvii. Hist. Littéraire de la France, t. ii. p. 28.

in grammatical language. A song is still extant, in rhyme and loose accentual measure, written upon a victory of Clotaire II. over the Saxons in 622, and obviously intended for circulation among the people.* Fortunatus says, in his life of St. Aubin of Angers, that he should take care not to use any expression unintelligible to the people.† Baudemind, in the middle of the seventh century, declares, in his life of St. Amand, that he writes in a rustic and vulgar style, that the reader may be excited to imitation.‡ Not that these legends were actually perused by the populace, for the very art of reading was confined to a few. But they were read publicly in the churches, and probably with a pronunciation accommodated to the corruptions of ordinary language. Still the Latin syntax must have been tolerably understood; and we may therefore say that Latin had not ceased to be a living language in Gaul during the seventh century. Faults indeed against the rules of grammar, as well as unusual idioms, perpetually occur in the best writers of the Merovingian period,

* One stanza of this song will suffice to shew that the Latin language was yet unchanged.

De Clotairio est canere rege
Francorum,
Qui ivit pugnare cum gente
Saxonum,
Quam graviter provenisset missis
Saxonum,
Si non fuisset inclitus Faro de
gente Burgundionum.

I observe that Ritson, Metrical Romances, vol. i. p. 18. translates the last line; "If it had not been for *Pharaoh, the Burgundian.*" What abuse he would have thrown on any one else for a blunder like this! Faro is the same as baro, a nobleman, or sometimes, simply a man.

† Præcavendum est, ne ad aures populi minus aliquid intelligibile proferatur. Mém. de l'Acad. t. xvii. p. 712.

‡ Rustico et plebeio sermone, propter exemplum et imitationem. ib. ibid.

such as Gregory of Tours; while charters drawn up by less expert scholars deviate much farther from purity.*

The corrupt provincial idiom became gradually more and more dissimilar to grammatical Latin; and the lingua Romana rustica, as the vulgar *patois* (to borrow a word that I cannot well translate) had been called, acquired a distinct character as a new language in the eighth century.† Latin orthography, which had been hitherto pretty well maintained in books, though not always in charters, gave way to a new spelling, conformably to the current pronunciation. Thus we find lui, for illius, in the Formularies of Marculfus; and Tu lo juva in a liturgy of Charlemagne's age, for Tu illum juva. When this barrier was once broken down, such a deluge of innovation poured in, that all the Latin characteristics were effaced in writing as well as speaking, and the existence of a new language became undeniable. In a council held at Tours in 813, the bishops are ordered to have certain homilies of the fathers translated into the rustic Roman, as well as the German tongue.‡ After this it is unnecessary to multiply proofs of the change which Latin had undergone.

* Hist. Littéraire de la France, t. iii. p. 5. Mém. de l'Académie, t. xxiv. p. 617. Nouveau Traité de Diplomatique, t. iv. p. 485.

† Hist. Littéraire de la France, t. vii. p. 12. The editors say, that it is mentioned by name even in the seventh century, which is very natural, as the corruption of Latin had then become striking.

‡ Mém. de l'Acad. des Insc. t. xvii. See two Memoirs in this volume by du Clos and le Bœuf, especially the latter, as well as that already mentioned in t. xxiv, p. 582. by M. Bonamy.

Its corruption in Italy.

In Italy, the progressive corruptions of the Latin language were analogous to those which occurred in France, though we do not find in writings any unequivocal specimens of a new formation at so early a period. But the old inscriptions, even of the fourth and fifth centuries, are full of solecisms and corrupt orthography. In legal instruments under the Lombard kings, the Latin inflexions are indeed used, but with so little regard to propriety, that it is obvious the writers had not the slightest tincture of grammatical knowledge. This observation extends to a very large proportion of such documents down to the twelfth century, and is as applicable to France and Spain as it is to Italy. In these charters the peculiar characteristics of Italian orthography and grammar frequently appear. Thus we find, in the eighth century, diveatis for debeatis, da for de in the ablative, avendi for habendi, dava for dabat, cedo a deo, and ad ecclesia, among many similar corruptions.* Latin was so changed, it is said by a writer of Charlemagne's age, that scarcely any part of it was popularly known. Italy indeed had suffered more than France itself by invasion, and was reduced to a lower state of barbarism, though probably from the greater distinctness of pronunciation habitual to the Italians, they lost less of their original language than the French. I do not find, however, in the writers who have treated this subject, any express evidence of a vulgar language distinct

* Muratori, Dissert. i. and xliii.

from Latin, earlier than the close of the tenth century, when it is said in the epitaph of Pope Gregory V., who died in 999, that he instructed the people in three dialects;—the Frankish or German, the vulgar, and the Latin.*

Ignorance consequent on the disuse of Latin.

When Latin had thus ceased to be a living language, the whole treasury of knowledge was locked up from the eyes of the people. The few who might have imbibed a taste for literature, if books had been accessible to them, were reduced to abandon pursuits that could only be cultivated through a kind of education not easily within their reach. Schools, confined to cathedrals and monasteries, and exclusively designed for the purposes of religion, afforded no encouragement or opportunities to the laity.† The worst effect was, that, as the newly formed languages were hardly made use of in writing, Latin being still preserved in all legal instruments and public correspondence, the very use of letters, as well as of books, was forgotten. For many centuries, to sum up the account of ignorance in a word, it was rare for a layman, of whatever rank, to know how to sign his name.‡ Their charters, till the use of

* Usus Franciscâ, vulgari, et voce Latinâ,
Instituit populos eloquio triplici.

Fontanini, dell' Eloquenza Italiana, p. 15. Muratori, Dissert. xxxii.

† Histoire Littéraire de la France, t. vi. p. 20. Muratori, Dissert. xliii.

‡ Nouveau Traité de Diplomatique, t. ii. p. 419. This became, the editors say, much less unusual about the end of the thirteenth century; a pretty late period! A few signatures to deeds appear in the fourteenth century; in the next they are more frequent. ibid. The Emperor Frederic Barbarossa could not read, (Struvius, Corpus

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seals became general, were subscribed with the mark of the cross. Still more extraordinary it was to find one who had any tincture of learning. Even admitting every indistinct commendation of a monkish biographer, (with whom a knowledge of church-music would pass for literature,)* we could make out a very short list of scholars. None certainly were more distinguished as such than Charlemagne and Alfred. But the former, unless we reject a very plain testimony, was incapable of writing;† and Alfred found difficulty in making a translation from the pastoral instruction of St. Gregory, on account of his imperfect knowledge of Latin.‡

Whatever mention, therefore, we find of learning and the learned, during these dark ages, must be understood to relate only to such as were within the pale of clergy, which indeed was pretty extensive, and comprehended many who did not exercise the offices of religious ministry. But even

Hist. German. t. i. p. 377.; nor John king of Bohemia in the middle of the fourteenth century, (Sismondi, t. v. p. 205.) nor Philip the Hardy king of France, although the son of St. Louis. (Velly, t. vi. p. 426.)

* Louis IV., king of France, laughing at Fulk, count of Anjou, who sang anthems among the choristers of Tours, received the following pithy epistle from his learned vassal: Noveritis, domine, quod rex illiteratus est asinus coronatus. Gesta Consulum Andegavensium. In the same book, Geoffrey, father of our Henry II., is said to be optime literatus; which perhaps imports little more learning than his ancestor Fulk possessed.

† The passage in Eginhard, which has occasioned so much dispute, speaks for itself: Tentabat et scribere, tabulasque et codicillos ad hoc in lecticula sub cervicalibus circumferre solebat, ut, cum vacuum tempus esset, manum effigiandis literis assuefaceret; sed parum prosperè successit labor præposterus ac serò inchoatus.

‡ Spelman. Vit. Alfred. Append.

the clergy were, for a long period, not very materially superior, as a body, to the uninstructed laity. An inconceivable cloud of ignorance overspread the whole face of the church, hardly broken by a few glimmering lights, who owe almost the whole of their distinction to the surrounding darkness. In the sixth century the best writers in Latin were scarcely read;* and perhaps from the middle of this age to the eleventh, there was, in a general view of literature, little difference to be discerned. If we look more accurately, there will appear certain gradual shades of twilight on each side of the greatest obscurity. France reached her lowest point at the beginning of the eighth century; but England was at that time more respectable, and did not fall into complete degradation till the middle of the ninth. There could be nothing more deplorable than the state of letters in Italy and in England during the succeeding century; but France seems to have been uniformly, though very slowly, progressive from the time of Charlemagne.†

Of this prevailing ignorance it is easy to produce abundant testimony. Contracts were made ver-

* Hist. Littéraire de la France, t. iii. p. 5.

† These four dark centuries, the eighth, ninth, tenth, and eleventh, occupy five large quarto volumes of the Literary History of France, by the fathers of St. Maur. But the most useful part will be found in the general view at the commencement of each volume; the remainder is taken up with biographies, into which a reader may dive at random, and sometimes bring up a curious fact.

Tiraboschi, Storia della Litteratura, t. iii. and Muratori's forty-third Dissertation are good authorities for the condition of letters in Italy; but I cannot easily give references to all the books which I have consulted.

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bally, for want of notaries capable of drawing up charters; and these, when written, were frequently barbarous and ungrammatical to an incredible degree. For some considerable intervals, scarcely any monument of literature has been preserved, except a few jejune chronicles, the vilest legends of saints, or verses equally destitute of spirit and metre. In almost every council, the ignorance of the clergy forms a subject for reproach. It is asserted, by one held in 992, that scarcely a single person was to be found in Rome itself who knew the first elements of letters.* Not one priest of a thousand in Spain, about the age of Charlemagne, could address a common letter of salutation to another.† In England, Alfred declares that he could not recollect a single priest, south of the Thames, (the best part of England,) at the time of his accession, who understood the ordinary prayers, or could translate Latin into his mother-tongue.‡ Nor was this better in the time of Dunstan, when, it is said, none of the clergy knew how to write or translate a Latin letter.§ The homilies which they

* Tiraboschi, t. iii. p. 198.

† Mabillon, De Re Diplomaticâ, p. 55.

‡ Spelman. Vit. Alfred. Append. The whole drift of Alfred's preface to this translation is to defend the expediency of rendering books into English, on account of the general ignorance of Latin. The zeal which this excellent prince shews for literature is delightful. Let us endeavour, he says, that all the English youth, especially the children of those who are free-born, and can educate them, may learn to read English, before they take to any employment. Afterwards, such as please may be instructed in Latin. Before the Danish invasion indeed, he tells us, churches were well furnished with books; but the priests got little good from them, being written in a foreign language which they could not understand.

§ Mabillon, De Re Diplomaticâ, p. 55. Ordericus Vitalis, a more candid judge of our unfortu-

preached were compiled for their use by some bishops, from former works of the same kind, or the writings of the fathers.

This universal ignorance was rendered unavoidable, among other causes, by the scarcity of books, which could only be procured at an immense price. From the conquest of Alexandria by the Saracens at the beginning of the seventh century, when the Egyptian papyrus almost ceased to be imported into Europe, to the close of the tenth, about which time the art of making paper from cotton rags seems to have been introduced, there were no materials for writing except parchment, a substance too expensive to be readily spared for mere purposes of literature.* Hence an unfortunate prac-

Scarcity of books.

nate ancestors than other contemporary annalists, says, that the English were, at the conquest, rude and almost illiterate, which he ascribes to the Danish invasion. Du Chesne, Hist. Norm. Script. p. 518. However, Ingulfus tells us, that the library of Croyland contained above three hundred volumes, till the unfortunate fire that destroyed that abbey in 1091. Gale 15 Scriptores, t. i. 98. Such a library was very extraordinary in the eleventh century, and could not have been equalled for some ages afterwards. Ingulfus mentions at the same time, a nadir, as he calls it, or planetarium, executed in various metals. This had been presented to Abbot Turketul in the tenth century by a king of France, and was, I make no doubt, of Arabian, or perhaps Greek manufacture.

* Parchment was so scarce, that none could be procured about 1120 for an illuminated copy of the Bible. Warton's Hist. of English Poetry, Dissert. II. I suppose the deficiency was of skins beautiful enough for this purpose; it cannot be meant, that there was no parchment for legal instruments.

Manuscripts written on papyrus, as may be supposed from the fragility of the material, as well as the difficulty of procuring it, are of extreme rarity. That in the British Museum, 'being a charter to a church at Ravenna in 572, is in every respect the most curious; and indeed both Mabillon and Muratori seem never to have seen any thing written on papyrus; though they trace its occasional use down to the eleventh or twelfth centuries. Mabillon, De Re Diplomaticâ, l. ii. Muratori, Antichità Italiane, Dissert. xliii. p. 602. But the authors of the Nouveau Traité de Diplomatique speak of several manuscripts on this mate-

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tice gained ground, of erasing a manuscript in order to substitute another on the same skin. This occasioned probably the loss of many ancient authors, who have made way for the legends of saints, or other ecclesiastical rubbish.

Want of eminent men in literature.

If we would listen to some literary historians, we should believe that the darkest ages contained many individuals, not only distinguished among their contemporaries, but positively eminent for abilities and knowledge. A proneness to extol every monk, of whose production a few letters or a devotional treatise survives, every bishop, of whom it is related that he composed homilies, runs through the laborious work of the Benedictins of St. Maur, the Literary History of France, and, in a less degree, is observable even in Tiraboschi, and in most books of this class. Bede, Alcuin, Hincmar, Raban, and a number of inferior names, become real giants of learning in their uncritical panegyrics. But one might justly say, that ignorance is the smallest defect of the writers of these dark ages. Several of them were tolerably acquainted with books; but that wherein they are uniformly deficient is original argument or expression. Almost every one is a compiler of scraps from the fathers, or from such semi-classical authors as Boethius, Cassiodorus, or Martianus Ca-

rial as extant in France and Italy. t. i. p. 493.

As to the general scarcity and high price of books in the middle ages, Robertson, Introduction to Hist. Charles V. note x. and Warton, in the above cited dissertation, not to quote authors less accessible, have collected some of the leading facts; to whom I refer the reader.

pella.* Indeed I am not aware that there appeared more than two really considerable men in the republic of letters, from the sixth to the middle of the eleventh century; John, sirnamed Scotus or Erigena, a native of Ireland; and Gerbert, who became pope by the name of Silvester II.: the first endowed with a bold and acute metaphysical genius; the second excellent, for the time when he lived, in mathematical science and mechanical inventions.†

Cause of the preservation of learning —religion.

If it be demanded, by what cause it happened, that a few sparks of ancient learning survived throughout this long winter, we can only ascribe their preservation to the establishment of Christianity. Religion alone made a bridge, as it were, across the chaos, and has linked the two periods of ancient and modern civilization. Without this connecting principle, Europe might indeed have awakened to intellectual pursuits, and the genius of recent times needed not to be invigorated by the imitation of antiquity. But the memory of Greece and Rome would have been feebly preserved by tradition; and the monuments of those

* Lest I should seem to have spoken too peremptorily, I wish it to be understood, that I pretend to hardly any direct acquaintance with these writers, and found my censure on the authority of others, chiefly indeed on the admissions of those who are too disposed to fall into a strain of panegyric. See Histoire Littéraire de la France, t. iv. p. 281. et alibi.

† John Scotus, who, it is almost needless to say, must not be confounded with the still more famous metaphysician Duns Scotus, lived under Charles the Bald, in the middle of the ninth century. Silvester II. died in 1003. Whether he first brought the Arabic numeration into Europe, as has been commonly said, seems uncertain; it was at least not practised for some centuries after his death.

nations might have excited, on the return of civilization, that vague sentiment of speculation and wonder with which men now contemplate Persepolis or the Pyramids. It is not, however, from religion simply that we have derived this advantage, but from religion as it was modified in the dark ages. Such is the complex reciprocation of good and evil in the dispensations of Providence, that we may assert, with only an apparent paradox, that, had religion been more pure, it would have been less permanent, and that Christianity has been preserved by means of its corruptions. The sole hope for literature depended on the Latin language; and I do not see why that should not have been lost, if three circumstances in the prevailing religious system, all of which we are justly accustomed to disapprove, had not conspired to maintain it; the papal supremacy, the monastic institutions, and the use of a Latin liturgy. I. A continual intercourse was kept up in consequence of the first, between Rome and the several nations of Europe; her laws were received by the bishops, her legates presided in councils; so that a common language was as necessary in the church as it is at present in the diplomatic relations of kingdoms. II. Throughout the whole course of the middle ages, there was no learning, and very little regularity of manners, among the parochial clergy. Almost every distinguished man was either the member of a chapter or of a convent. The monasteries were subjected to strict rules of discipline, and held out, at the worst, more opportunities for

study than the secular clergy possessed, and fewer for worldly dissipations. But their most important service was as secure repositories for books. All our manuscripts have been preserved in this manner, and could hardly have descended to us by any other channel; at least, there were intervals, when I do not conceive that any royal or private libraries existed. III. Monasteries, however, would probably have contributed very little towards the preservation of learning, if the Scriptures and the liturgy had been translated out of Latin when that language ceased to be intelligible. Every rational principle of religious worship called for such a change; but it would have been made at the expense of posterity. One might presume, if such refined conjectures were consistent with historical caution, that the more learned and sagacious ecclesiastics of those times, deploring the gradual corruption of the Latin tongue, and the danger of its absolute extinction, were induced to maintain it as a sacred language, and the depositary, as it were, of that truth and that science which would be lost in the barbarous dialects of the vulgar. But a simpler explanation is found in the radical dislike of innovation which is natural to an established clergy. Nor did they want as good pretexts, on the ground of convenience, as are commonly alledged by the opponents of reform. They were habituated to the Latin words of the church-service, which had become, by this association, the readiest instruments of devotion, and with the majesty of which the Romance jargon could bear

no comparison. Their musical chants were adapted to these sounds, and their hymns depended, for metrical effect, on the marked accents and powerful rhymes which the Latin language affords. The vulgate Latin of the Bible was still more venerable. It was like a copy of a lost original; and a copy attested by one of the most eminent fathers, and by the general consent of the church. These are certainly no adequate excuses for keeping the people in ignorance; and the gross corruption of the middle ages is in a great degree assignable to this policy. But learning, and consequently religion, have eventually derived from it the utmost advantage.

Superstitions.

In the shadows of this universal ignorance, a thousand superstitions, like foul animals of night, were propagated and nourished. It would be very unsatisfactory to exhibit a few specimens of this odious brood, when the real character of those times is only to be judged by their accumulated multitude. In every age, it would be easy to select proofs of irrational superstition, which, separately considered, seem to degrade mankind from its level in the creation; and perhaps the contemporaries of Swedenborg and Southcote have no right to look very contemptuously upon the fanaticism of their ancestors. There are many books, from which a sufficient number of instances may be collected, to shew the absurdity and ignorance of the middle ages in this respect. I shall only mention two, as affording more general evidence, than any local or obscure superstition. In the

tenth century, an opinion prevailed every where, that the end of the world was approaching. Many charters begin with these words: "As the world is now drawing to its close." An army marching under the Emperor Otho I. was so terrified by an eclipse of the sun, which it conceived to announce this consummation, as to disperse hastily on all sides. As this notion seems to have been founded on some confused theory of the Millennium, it naturally died away when the seasons proceeded in the eleventh century with their usual regularity.* A far more remarkable and permanent superstition was the appeal to heaven in judicial controversies, whether through the means of combat or of ordeal. The principle of these was the same; but in the former, it was mingled with feelings independent of religion; the natural dictates of resentment in a brave man unjustly accused, and the sympathy of a warlike people with the display of skill and intrepidity. These, in course of time, almost obliterated the primary character of judicial combat, and ultimately changed it into the modern duel, in which assuredly there is no mixture of superstition.† But,

* Robertson, Introduction to Hist. Charles V. note 13. Schmidt, Hist. des Allemands, t. ii. p. 380. Hist. Littéraire de la France, t. vi.

† Duelling, in the modern sense of the word, exclusive of casual frays and single combats during war, was unknown before the sixteenth century. But we find one anecdote, which seems to illustrate its derivation from the judicial combat. The dukes of Lancaster and Brunswic having some differences agreed to decide them by duel before John king of France. The lists were prepared with the solemnity of a real trial by battle; but the king interfered to prevent the engagement. Villaret, t. ix. p. 71. The barbarous practice of wearing swords as a part of domestic dress, which tended very much

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in the various tests of innocence, which were called ordeals, this stood undisguised and unqualified. It is not necessary to describe what is so well known; the ceremonies of trial by handling hot iron, by plunging the arm into boiling fluids, by floating or sinking in cold water, or by swallowing a piece of consecrated bread. It is observable that as the interference of heaven was relied upon as a matter of course, it seems to have been reckoned nearly indifferent, whether such a test was adopted, as must, humanly considered, absolve all the guilty, or one that must convict all the innocent. The ordeals of hot iron or water were however more commonly used; and it has been a perplexing question, by what dexterity these tremendous proofs were eluded. They seem at least to have placed the decision of all judicial controversies in the hands of the clergy, who must have known the secret, whatever that might be, of satisfying the spectators that an accused person had held a mass of burning iron with impunity. For several centuries, this mode of investigation was in great repute, though not without opposition from some eminent bishops. It does discredit to the memory of Charlemagne that he was one of its warmest advocates.* But the judicial com-

to the frequency of duelling, was not introduced till the latter part of the fifteenth century. I can only find one print in Montfaucon's Monuments of the French monarchy where a sword is worn without armour before the reign of Charles VIII.; though a few, as early as the reign of Charles VI., have short daggers in their girdles. The exception is a figure of Charles VII., t. iii. pl. 47.

* Baluzii Capitularia, p. 444. It was abolished by Louis the Debonair, a man, as I have noticed in another place, not inferior, as a

bat, which indeed might be reckoned one species of ordeal, gradually put an end to the rest; and as the church acquired better notions of law, and a code of her own, she strenuously exerted herself against all these barbarous superstitions.*

Enthusiastic risings.

But the religious ignorance of the middle ages sometimes burst out in ebullitions of epidemical enthusiasm, more remarkable than these superstitious usages, though proceeding in fact from similar causes. For enthusiasm is little else than superstition put in motion, and is equally founded on a strong conviction of supernatural agency without any just conceptions of its nature. Nor has any denomination of christians produced, or even sanctioned, more fanaticism than the church of Rome.† These epidemical phrenzies, however, to which I am alluding, were merely tumultuous,

legislator, to his father. ibid. p. 668.

* Ordeals were not actually abolished in France, notwithstanding the law of Louis above mentioned, so late as the eleventh century, Bouquet, t. xi. p. 430. nor in England, till the reign of Henry III. Some of the stories we read, wherein accused persons have passed triumphantly through these severe proofs, are perplexing enough; and perhaps it is safer, as well as easier, to deny than to explain them. For example, a writer in the Archæologia, vol. xv. p. 192. has shewn that Emma, queen of Edward the Confessor, did not perform her trial by stepping *between*, as Blackstone imagines, but *upon* nine red-hot ploughshares. But he seems not aware that the whole story is unsupported by any contemporary or even respectable testimony. A similar anecdote is related of Cunegunda, wife of the Emperor Henry II., which probably gave rise to that of Emma. There are, however, medicaments, as is well known, that protect the skin to a certain degree against the effect of fire. This phænomenon would pass for miraculous, and form the basis of those exaggerated stories in monkish books.

† Besides the original lives of popish saints, and especially that of St. Francis in Wadding's Annales Minorum, the reader will find amusement in Bishop Lavington's Enthusiasm of Methodists and Papists compared.

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though certainly fostered by the creed of perpetual miracles, which the clergy inculcated, and drawing a legitimate precedent for religious insurrection from the crusades. For these, among their other evil consequences, seem to have principally excited a wild fanaticism that did not sleep for several centuries.*

The first conspicuous appearance of it was in the reign of Philip Augustus, when the mercenary troops, dismissed from the pay of that prince and of Henry II., committed the greatest outrages in the south of France. One Durand, a carpenter, deluded, it is said, by a contrived appearance of the Virgin, put himself at the head of an army of the populace, in order to destroy these marauders. His followers were styled Brethren of the White Caps, from the linen coverings of their heads. They bound themselves not to play at dice, nor frequent taverns, to wear no affected clothing, to avoid perjury and vain swearing. After some successes over the plunderers, they went so far as to forbid the lords to take any dues from their vassals, on pain of incurring the indignation of the brotherhood. It may easily be imagined that

* The most singular effect of this crusading spirit was witnessed in 1211, when a multitude amounting, as some say, to 90,000, chiefly composed of children, and commanded by a child, set out for the purpose of recovering the Holy Land. They came for the most part from Germany, and reached Genoa without harm. But finding there an obstacle which their imperfect knowledge of geography had not anticipated, they soon dispersed in various directions. Thirty thousand arrived at Marseilles, where part were murdered, part probably starved, and the rest sold to the Saracens. Annali di Muratori, A.D. 1211. Velly, Hist. de France, t. iv. p. 206.

they were soon entirely discomfited, so that no one dared to own that he had belonged to them.*

During the captivity of St. Louis in Egypt, a more extensive and terrible ferment broke out in Flanders, and spread from thence over great part of France. An impostor declared himself commissioned by the Virgin to preach a crusade, not to the rich and noble, who, for their pride, had been rejected of God, but to the poor. His disciples were called Pastoureaux, the simplicity of shepherds having exposed them more readily to this delusion. In a short time they were swelled by the confluence of abundant streams to a moving mass of a hundred thousand men, divided into companies, with banners bearing a cross and a lamb, and commanded by the impostor's lieutenants. He assumed a priestly character, preaching, absolving, annulling marriages. At Amiens, Bourges, Orleans, and Paris itself, he was received as a divine prophet. Even the regent Blanche, for a time, was led away by the popular tide. His main topic was reproach of the clergy for their idleness and corruption, a theme well adapted to the ears of the people, who had long been uttering similar strains of complaint. In some towns his followers massacred the priests and plundered the monasteries. The government at length began to exert itself; and the public sentiment turning against the authors of so much confusion, this rabble was put to the sword or dissi-

* Velly, t. iii. p. 295. Du Cange v. Capuciati.

pated.* Seventy years afterwards, an insurrection almost exactly parallel to this burst out under the same pretence of a crusade. These insurgents too bore the name of Pastoureaux, and their short career was distinguished by a general massacre of the Jews.†

But though the contagion of fanaticism spreads much more rapidly among the populace, and in modern times is almost entirely confined to it, there were examples, in the middle ages, of an epidemical religious lunacy, from which no class was exempt. One of these occurred about the year 1260, when a multitude of every rank, age and sex, marching two by two in procession along the streets and public roads, mingled groans and dolorous hymns with the sound of leathern scourges which they exercised upon their naked backs. From this mark of penitence, which, as it bears at least all the appearance of sincerity, is not uncommon in the church of Rome, they acquired the name of Flagellants. Their career began, it is said, at Perugia, whence they spread over the rest of Italy, and into Germany and Poland. As this spontaneous fanaticism met with no encouragement from the church, and was prudently discountenanced by the civil magistrate, it died away in a very short time.‡ But it is more surprizing,

* Velly, Hist. de France, t. v. p. 7. Du Cange v. Pastorelli.

† Id. t. viii. p. 99. The continuator of Nangis says, sicut fumus subitò evanuit tota illa commotio. Spicilegium, t. iii. p. 77. It is a curious question, why these whirlwinds of enthusiasm never arise in modern times.

‡ Velly, t. v. p. 279. Du Cange, Verberatio.

that, after almost a century and a half of continual improvement and illumination, another irruption of popular extravagance burst out under circumstances exceedingly similar.* In the month of August 1399, says a contemporary historian, there appeared all over Italy a description of persons, called Bianchi, from the white linen vestments that they wore. They passed from province to province, and from city to city, crying out Misericordia! with their faces covered and bent towards the ground, and bearing before them a great crucifix. Their constant song was: Stabat Mater dolorosa. This lasted three months; and whoever did not attend their processions was reputed a heretic.† Almost every Italian writer of the time takes notice of these Bianchi; and Muratori ascribes a remarkable reformation of manners (though certainly a very transient one) to their influence.‡ Nor were they confined to Italy, though no such meritorious exertions are imputed to them in other countries. In France, their practice of covering the face gave such opportunity to crimes as to be prohibited by the government;§ and we have an

* Something of a similar kind is mentioned by G. Villani, under the year 1310. l. viii. c. 122.

† Annal. Mediolan. in Murat. Script. Rer. Ital. t. xvi. p. 832. G. Stella. Ann. Genuens. t. xvii. p. 1072. Chron. Foroliviense, t. xix. p. 874. Ann. Bonincontri. t. xxi. p. 79.

‡ Dissert. 75. Sudden transitions from profligate to austere manners were so common among individuals, that we cannot be surprized at their sometimes becoming in a manner national. Azarius, a chronicler of Milan, after describing the almost incredible dissoluteness of Pavia, gives an account of an instantaneous reformation wrought by the preaching of a certain friar. This was about 1360. Script. Rer. Ital. t. xvi. p. 375.

§ Villaret, t. xii. p. 327.

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act on the rolls of the first parliament of Henry IV., forbidding any one, "under pain of forfeiting all his worth, to receive the new sect in white clothes, pretending to great sanctity," which had recently appeared in foreign parts.*

Pretended miracles.

The devotion of the multitude was wrought to this feverish height by the prevailing system of the clergy. In that singular polytheism, which had been grafted on the language rather than the principles of Christianity, nothing was so conspicuous as the belief of perpetual miracles; if indeed those could properly be termed miracles, which by their constant recurrence, even upon trifling occasions, might seem within the ordinary dispensations of Providence. These superstitions arose in what are called primitive times, and are certainly no part of popery, if in that word we include any especial reference to the Roman see. But successive ages of ignorance swelled the delusion to such an enormous pitch, that it was as difficult to trace, we may say without exaggeration, the real religion of the Gospel in the popular belief of the laity, as the real history of Charlemagne in the romance of Turpin. It must not be supposed, that these absurdities were produced, as well as nourished, by ignorance. In most cases, they were the work of deliberate imposture. Every cathedral or monastery had its tutelar saint, and every saint his legend, fabricated in order to enrich the churches under his protection, by ex-

* Rot. Parl. v. iii. p. 428.

aggerating his virtues, his miracles, and, consequently, his power of serving those who paid liberally for his patronage.* Many of those saints were imaginary persons; sometimes a blundered inscription added a name to the calendar; and sometimes, it is said, a heathen god was surprized at the company to which he was introduced, and the rites with which he was honoured.†

Mischiefs arising from this superstition.

It would not be consonant to the nature of the present work, to dwell upon the erroneousness of this religion; but its effect upon the moral and intellectual character of mankind was so prominent, that no one can take a philosophical view of the middle ages without attending more than is at present fashionable to their ecclesiastical history. That the exclusive worship of saints, under the guidance of an artful, though illiterate priesthood, degraded the understanding, and begot a stupid credulity and fanaticism, is sufficiently evident. But it was also so managed as to loosen the bonds of religion, and pervert the standard of morality. If these inhabitants of heaven had been represented as stern avengers, accepting no slight atonement for heavy offences, and prompt to interpose their controul over natural events for the detection and punishment of guilt, the creed, however impossible to be reconciled with experience, might have

* This is confessed by the authors of Histoire Littéraire de la France, t. ii. p. 4. and indeed by many Catholic writers. I need not quote Mosheim, who more than confirms every word of my text.

† Middleton's Letter from Rome. If some of our eloquent countryman's positions should be disputed, there are still abundant catholic testimonies, that imaginary saints have been canonized.

proved a salutary check upon a rude people, and would at least have had the only palliation that can be offered for a religious imposture, its political expediency. In the legends of those times, on the contrary, they appeared only as perpetual intercessors, so good-natured, and so powerful, that a sinner was more emphatically foolish than he is usually represented, if he failed to secure himself against any bad consequences. For a little attention to the saints, and especially to the Virgin, with due liberality to their servants, had saved, he would be told, so many of the most atrocious delinquents, that he might equitably presume upon similar luck in his own case.

This monstrous superstition grew to its height in the twelfth century. For the advance that learning then made was by no means sufficient to counteract the vast increase of monasteries, and the opportunities which the greater cultivation of modern languages afforded for the diffusion of legendary tales. It was now too that the veneration paid to the Virgin, in early times very great, rose to an almost exclusive idolatry. It is difficult to conceive the stupid absurdity, and the disgusting profaneness of those stories, which were invented by the monks to do her honour. A few examples have been thrown into a note.*

* Le Grand d'Aussy has given us, in the fifth volume of his Fabliaux, several of the religious tales, by which the monks endeavoured to withdraw the people from romances of chivalry. The following specimens will abundantly confirm my assertions, which may perhaps appear harsh and extravagant to the reader.

There was a man whose occupation was high-way robbery; but

Whether the superstition of these dark ages had actually passed that point, when it becomes more injurious to public morals and the welfare of society than the entire absence of all religious notions, is a very complex question, upon which

Not altogether unmixed with good.

whenever he set out on any such expedition he was careful to address a prayer to the Virgin. Taken at last, he was sentenced to be hanged. While the cord was round his neck he made his usual prayer, nor was it ineffectual. The Virgin supported his feet "with her white hands," and thus kept him alive two days, to the no small surprize of the executioner, who attempted to complete his work with strokes of a sword. But the same invisible hand turned aside the weapon, and the executioner was compelled to release his victim, acknowledging the miracle. The thief retired into a monastery, which is always the termination of these deliverances.

At the monastery of St. Peter near Cologne lived a monk perfectly dissolute and irreligious, but very devout towards the Apostle. Unluckily he died suddenly without confession. The fiends came as usual to sieze his soul. St. Peter, vexed at losing so faithful a votary, besought God to admit the monk into Paradise. His prayer was refused, and though the whole body of saints, apostles, angels and martyrs joined, at his request, to make interest, it was of no avail. In this extremity he had recourse to the Mother of God. "Fair lady," he said, "my monk is lost if you do not interfere for him; but what is impossible for us will be but sport to you, if you please to assist us. Your son, if you but speak a word, must yield, since it is in your power to command him." The Queen Mother assented, and, followed by all the virgins, moved towards her Son. He who had himself given the precept, Honour thy father and thy mother, no sooner saw his own parent approach, than he rose to receive her; and taking her by the hand inquired her wishes. The rest may be easily conjectured. Compare the gross stupidity, or rather the atrocious impiety of this tale, with the pure theism of the Arabian Nights, and judge whether the Deity was better worshipped at Cologne or at Bagdad.

It is unnecessary to multiply instances of this kind. In one tale, the Virgin takes the shape of a nun, who had eloped from the convent, and performs her duties ten years, till, tired of a libertine life, she returns unsuspected. This was in consideration of her having never omitted to say an Ave as she passed the Virgin's image. In another, a gentleman, in love with a handsome widow, consents, at the instigation of a sorcerer, to renounce God and the saints, but cannot be persuaded to give up the Virgin, well knowing that, if he kept her his friend, he should obtain pardon through her means. Accordingly, she inspired his mistress with so much passion, that he married her within a few days.

These tales, it may be said, were

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I would by no means pronounce an affirmative decision. A salutary influence, breathed from the spirit of a more genuine religion, often displayed itself among the corruptions of a degenerate superstition. In the original principles of monastic orders, and the rules by which they ought at least to have been governed, there was a character of meekness, self-denial, and charity, that could not wholly be effaced. These virtues, rather than justice and veracity, were inculcated by the religious ethics of the middle ages; and in the relief of indigence, it may, upon the whole, be asserted, that the monks did not fall short of their profession.* This eleemosynary spirit, indeed, remarkably distinguishes both Christianity and Moham-

the production of ignorant men, and circulated among the populace. Certainly they would have excited contempt and indignation in the more enlightened clergy. But I am concerned with the general character of religious notions among the people; and for this it is better to take such popular compositions, adapted to what the laity already believed, than the writings of comparatively learned and reflecting men. However, stories of the same cast are frequent in the monkish historians. Matthew Paris, one of the most respectable of that class, and no friend to the covetousness or relaxed lives of the priesthood, tells us of a knight who was on the point of being damned for frequenting tournaments, but saved by a donation he had formerly made to the Virgin. p. 290.

* I am inclined to acquiesce in his general opinion; yet an account of expenses at Bolton Abbey, about the reign of Edward II., published in Whitaker's History of Craven, p. 51. makes a very scanty shew of almsgiving in this opulent monastery. Much, however, was no doubt given in victuals. But it is a strange error to conceive that English monasteries before the dissolution fed the indigent part of the nation, and gave that general relief which the poor-laws are intended to afford.

Piers Plowman is indeed a satyrist; but he plainly charges the monks with want of charity.

Little had lordes to do to give landes
from their heires,
To religious that have no ruthe
though it rain on their aultres;
In many places there the parsons
be themself at ease,
Of the poor they have no pitie, and
that is their poor charitie.

medism from the moral systems of Greece and Rome, which were very deficient in general humanity and sympathy with suffering. Nor do we find in any single instance during ancient times, if I mistake not, those public institutions for the alleviation of human miseries, which have long been scattered over every part of Europe. The virtues of the monks assumed a still higher character, when they stood forward as protectors of the oppressed. By an established law, founded on very ancient superstition, the precincts of a church afforded sanctuary to accused persons. Under a due administration of justice, this privilege would have been simply and constantly mischievous, as we properly consider it to be in those countries where it still subsists. But in the rapine and tumult of the middle ages, the right of sanctuary might as often be a shield to innocence as an immunity to crime. We can hardly regret, in reflecting on the desolating violence which prevailed, that there should have been some green spots in the wilderness, where the feeble and the persecuted could find refuge. How must this right have enhanced the veneration for religious institutions! How gladly must the victims of internal warfare have turned their eyes from the baronial castle, the dread and scourge of the neighbourhood, to those venerable walls, within which not even the clamour of arms could be heard, to disturb the chant of holy men, and the sacred service of the altar! The protection of a sanctuary was never withheld. A son of Chilperic, king of France, hav-

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ing fled to that of Tours, his father threatened to ravage all the lands of the church unless they gave him up. Gregory the historian, bishop of the city, replied in the name of his clergy, that Christians could not be guilty of an act unheard of among pagans. The king was as good as his word, and did not spare the estate of the church, but dared not infringe its privileges. He had indeed previously addressed a letter to St. Martin, which was laid on his tomb in the church, requesting permission to take away his son by force; but the honest saint returned no answer.*

Vices of the monks and clergy.

The virtues, indeed, or supposed virtues, which had induced a credulous generation to enrich so many of the monastic orders, were not long preserved. We must reject, in the excess of our candour, all testimonies that the middle ages present, from the solemn declaration of councils, and reports of judicial inquiry, to the casual evidence of common fame in the ballad or romance, if we would extenuate the general corruption of those institutions. In vain new rules of discipline were devised, or the old corrected by reforms. Many of their worst vices grew so naturally out of their mode of life, that a stricter discipline could have no tendency to extirpate them. Such were the frauds I have already noticed, and the whole scheme of hypocritical austerities. Their extreme licentiousness were sometimes hardly concealed by the cowl of sanctity. I know not by what right

* Schmidt, Hist. des Allemands, t. i. p. 374.

we should disbelieve the reports of the visitation under Henry VIII., entering as they do into a multitude of specific charges, both probable in their nature and consonant to the unanimous opinion of the world.* Doubtless, there were many communities as well as individuals, to whom none of these reproaches would apply. In the very best view, however, that can be taken of monasteries, their existence is deeply injurious to the general morals of a nation. They withdraw men of pure conduct and conscientious principles from the exercise of social duties, and leave the common mass of human vice more unmixed. Such men are always inclined to form schemes of ascetic perfection, which can only be fulfilled in retirement; but, in the strict rules of monastic life, and under the influence of a grovelling superstition, their virtue lost all its usefulness. They fell implicitly into the snares of crafty priests, who made submission to the church not only the condition but the measure of all praise. He is a good Christian, says Eligius, a saint of the seventh century, who comes frequently to church; who

* See Fosbrooke's British Monachism, vol. i. p. 127., and vol. ii. p. 8., for a farrago of evidence against the monks. Clemangis, a French theologian of considerable eminence at the beginning of the fifteenth century, speaks of nunneries in the following terms: Quid aliud sunt hoc tempore puellarum monasteria, nisi quædam non dico Dei sanctuaria, sed Veneris execranda prostibula, sed lascivorum et impudicorum juvenum ad libidines explendas receptacula? ut idem sit hodie puellam velare, quod et publicè ad scortandum exponere. William Prynne, from whose records, vol. ii. p. 229., I have taken this passage, quotes it on occasion of a charter of King John, banishing thirty nuns of Ambresbury into different convents, propter vitæ suæ turpitudinem.

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presents an oblation that it may be offered to God on the altar, who does not taste the fruits of his land till he has consecrated a part of them to God; who can repeat the Creed or the Lord's Prayer. Redeem your souls from punishment while it is in your power; offer presents and tythes to churches, light candles in holy places, as much as you can afford, come more frequently to church, implore the protection of the saints; for, if you observe these things, you may come with security at the day of judgement to say, Give unto us, Lord, for we have given unto thee.*

With such a definition of the Christian character, it is not surprizing that any fraud and injustice became honourable when it contributed to the riches of the clergy and glory of their order. Their frauds, however, were less atrocious than the savage bigotry with which they maintained their own system and infected the laity. In Saxony, Poland, Lithuania, and the countries on the Baltic sea, a sanguinary persecution extirpated the original idolatry. The Jews were everywhere the objects of popular insult and oppression, frequently of a general massacre, though protected, it must be confessed, by the laws of the church, as well as, in general, by temporal princes.† Of the

* Mosheim, cent. vii. c. 3. Robertson has quoted this passage, to whom perhaps I am immediately indebted for it. Hist. Charles V., vol. i. note 11.

† Mr. Turner has collected many curious facts relative to the condition of the Jews, especially in England. Hist. of England, vol. ii. p. 95. Others may be found dispersed in Velly's History of France; and many in the Spanish writers, Mariana and Zurita. The following are from Vaissette's History of Languedoc. It was the custom at Toulouse to give a blow

crusades it is only necessary to repeat that they begin in a tremendous eruption of fanaticism, and ceased only because that spirit could not be constantly kept alive. A similar influence produced the devastation of Languedoc, the stakes and scaffolds of the Inquisition, and rooted in the religious theory of Europe those maxims of intolerance, which it has so slowly, and still, perhaps, so imperfectly renounced.

From no other cause are the dictates of sound reason and the moral sense of mankind more confused than by this narrow theological bigotry. For as it must often happen that men, to whom the arrogance of a prevailing faction imputes religious error, are exemplary for their performance of moral duties, these virtues gradually cease to make their proper impression, and are depreciated by the rigidly orthodox, as of little value in comparison with just opinions in speculative points. On the other hand, vices are forgiven to those who are zealous in the faith. I speak too gently, and with a view to later times; in treating of the dark ages, it would be more correct to say, that crimes were commended. Thus Gregory of Tours, a saint of the church, after relating a most atrocious story of Clovis, the murder of a prince whom he

on the face to a Jew every Easter; this was commuted in the twelfth century for a tribute. t. ii. p. 151. At Beziers another usage prevailed, that of attacking the Jews' houses with stones from Palm Sunday to Easter. No other weapon was to be used; but it generally produced bloodshed. The populace were regularly instigated to the assault by a sermon from the bishop. At length a prelate wiser than the rest abolished this ancient practice, but not without receiving a good sum from the Jews. p. 485.

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had previously instigated to parricide, continues the sentence: "For God daily subdued his enemies to his hand, and increased his kingdom; because he walked before him in uprightness, and did what was pleasing in his eyes."*

Commutation of penances.

It is a frequent complaint of ecclesiastical writers, that the rigorous penances, imposed by the primitive canons upon delinquents, were commuted in a laxer state of discipline for less severe atonements, and ultimately indeed for money.† We must not, however, regret that the clergy should have lost the power of compelling men to abstain fifteen years from eating meat, or to stand exposed to public derision at the gates of a church. Such implicit submissiveness could only have produced superstition and hypocrisy among the laity, and prepared the road for a tyranny not less oppressive than that of India or ancient Egypt. Indeed the two earliest instances of ec-

* Greg. Tur. l. ii. c. 40. Of Theodebert, grandson of Clovis, the same historian says, magnum se et in omni bonitate præcipuum reddidit. In the next paragraph we find a story of his having two wives, and looking so tenderly on the daughter of one of them, that her mother tossed her over a bridge into the river. l. iii. c. 25. This indeed is a trifle to the passage in the text. There are continual proofs of immorality in the monkish historians. In the history of Ramsey Abbey, one of our best documents for Anglo-Saxon times, we have an anecdote of a bishop who made a Danish nobleman drunk, that he might cheat him of an estate, which is told with much approbation. Gale, Script. Anglic. t. i. p. 441. Walter de Hemingford recounts with excessive delight the well-known story of the Jews who were persuaded by the captain of their vessel to walk on the sands at low water, till the rising tide drowned them; and adds that the captain was both pardoned and rewarded for it by the king, gratiam promeruit et præmium. This is a mistake, inasmuch as he was hanged; but it exhibits the character of the historian. Hemingford, p. 21.

† Fleury, Troisième discours sur l'Histoire Ecclésiastique.

clesiastical interference with the rights of sovereigns, namely, the deposition of Wamba in Spain, and that of Louis the Debonair, were founded upon this austere system of penitence. But it is true that a repentance redeemed by money, or performed by a substitute, could have no salutary effect on the sinner; and some of the modes of atonement, which the church most approved, were particularly hostile to public morals. None was so usual as pilgrimage; whether to Jerusalem or Rome, which were the great objects of devotion; or to the shrine of some national saint, a James of Compostella, a David, or a Thomas Becket. This licenced vagrancy was naturally productive of dissoluteness, especially among the women. Our English ladies, in their zeal to obtain the spiritual treasures of Rome, are said to have relaxed the necessary caution about one that was in their own custody.* There is a capitulary of Charlemagne directed against itinerant penitents, who probably considered the iron chain around their necks an expiation of future as well as past offences.†

The crusades may be considered as martial pilgrimages on an enormous scale, and their influence upon general morality seems to have been altogether pernicious. Those who served under the

* Henry, Hist. of England, vol. ii. c. 7.

† Du Cange, v. Peregrinatio. Non sinantur vagari isti nudi cum ferro, qui dicunt se datâ pœnitentiâ ire vagantes. Melius videtur, ut si aliquod inconsuetum et capitale crimen commiserint, in uno loco permaneant laborantes et servientes et pœnitentiam agentes, secundum quod canonicé iis impositum sit.

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cross would not indeed have lived very virtuously at home; but the confidence in their own merits, which the principle of such expeditions inspired, must have aggravated the ferocity and dissoluteness of their ancient habits. Several historians attest the depravation of morals which existed both among the crusaders and in the states formed out of their conquests.*

Want of law.

While religion had thus lost almost every quality that renders it conducive to the good order of society, the controul of human law was still less efficacious. But this part of my subject has been anticipated in other passages of the present work; and I shall only glance at the want of regular subordination, which rendered legislative and judicial edicts a dead letter, and at the incessant private warfare, rendered legitimate by the usages of most continental nations. Such hostilities, conducted as they must usually have been, with injustice and cruelty, could not fail to produce a degree of rapacious ferocity in the general disposition of a people. And this certainly was among the characteristics of every nation for many centuries.

Degradation of morals.

It is easy to infer the degradation of society during the dark ages from the state of religion and police. Certainly there are a few great land-marks of moral distinctions so deeply fixed in human nature, that no degree of rudeness can destroy, nor

* I. de Vitriaco, in Gesta Dei per Francos, t. i. Villani, l. vii. c. 144.

even any superstition remove them. Wherever an extreme corruption has, in any particular society, defaced these sacred archetypes that are given to guide and correct the sentiments of mankind, it is in the course of Providence, that the society itself should perish by internal discord, or the sword of a conqueror. In the worst ages of Europe there must have existed the seeds of social virtues, of fidelity, gratitude and disinterestedness; sufficient at least to preserve the public approbation of more elevated principles than the public conduct displayed. Without these imperishable elements, there could have been no restoration of the moral energies; nothing upon which reformed faith, revived knowledge, renewed law, could exercise their nourishing influences. But history, which reflects only the more prominent features of society, cannot exhibit the virtues that were scarcely able to struggle through the general depravation. I am aware that a tone of exaggerated declamation is at all times usual with those who lament the vices of their own time; and writers of the middle ages are in abundant need of allowance on this score. Nor is it reasonable to found any inferences as to the general condition of society on single instances of crimes, however atrocious, especially when committed under the influence of violent passion. Such enormities are the fruit of every age, and none is to be measured by them. They make, however, a strong impression at the moment, and thus find a place in contemporary annals, from which modern writers are commonly glad to ex-

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tract whatever may seem to throw light upon manners. I shall, therefore, abstain from producing any particular cases of dissoluteness or cruelty from the records of the middle ages, lest I should weaken a general proposition by offering an imperfect induction to support it, and shall content myself with observing, that times to which men sometimes appeal, as to a golden period, were far inferior in every moral comparison to those in which we are thrown.* One crime, as more universal and characteristic than others, may be particularly noticed. All writers agree in the prevalence of judicial perjury. It seems to have almost invariably escaped human punishment; and the barriers of superstition were in this, as in every other instance, too feeble to prevent the commission of crimes. Many of the proofs by ordeal were applied to witnesses, as well as those whom they accused; and undoubtedly trial by combat was preserved, in a considerable degree, on account of

* Henry has taken pains in drawing a picture, not very favourable, of Anglo-Saxon manners. Book II. chap. 7. This perhaps is the best chapter, as the volume is the best volume, of his unequal work. His account of the Anglo-Saxons is derived in a great degree from William of Malmsbury, who does not spare them. Their civil history, indeed, and their laws speak sufficiently against the character of that people. But the Normans had little more to boast of in respect of moral correctness. Their luxurious and dissolute habits are as much noticed as their insolence; et peccati cujusdam, ab hoc solo admodum alieni, flagrâsse infamiâ testantur veteres. Vid. Ordericus Vitalis, p. 682. Johann. Sarisburiensis Policraticus, p. 194. Velly, Hist. de France, t. iii. p. 59. The state of manners in France under the two first races of kings, and in Italy both under the Lombards, and the subsequent dynasties, may be collected from their histories, their laws, and those miscellaneous facts which books of every description contain. Neither Velly, nor Muratori, Dissert. 23. are so satisfactory as we might desire.

the difficulty experienced in securing a just cause against the perjury of witnesses. Robert, king of France, perceiving how frequently men forswore themselves upon the relics of saints, and less shocked, apparently, at the crime than at the sacrilege, caused an empty reliquary of crystal to be used, that those who touched it might incur less guilt in fact, though not in intention. Such an anecdote characterizes both the man and the times.*

Love of field sports.

The favourite diversions of the middle ages, in the intervals of war, were those of hunting and hawking. The former must in all countries be a source of pleasure; but it seems to have been enjoyed in moderation by the Greeks and the Romans. With the northern invaders, however, it was rather a predominant appetite than an amusement; it was their pride and their ornament, the theme of their songs, the object of their laws, and the business of their lives. Falconry, unknown as a diversion to the ancients, became from the fourth century an equally delightful occupation.† From the Salic and other barbarous codes of the fifth century to the close of the period under our review, every age would furnish testimony to the ruling passion for these two species of chase, or, as they were some-

* Velly, Hist. de France, t. ii. p. 335. It has been observed, that Quid mores sine legibus? is as just a question as that of Horace; and that bad laws must produce bad morals. The strange practice of requiring numerous compurgators to prove the innocence of an accused person had a most obvious tendency to increase perjury.

† Muratori, Dissert. 23. t. i. p. 306. (Italian.) Beckman's Hist. of Inventions, vol. i. p. 319. Vie privée des Français, t. ii. p. 1.

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times called, the mysteries of woods and rivers. A knight seldom stirred from his house without a falcon on his wrist or a greyhound that followed him. Thus are Harold and his attendants represented, in the famous tapestry of Bayeux. And in the monuments of those who died any where but on the field of battle, it is usual to find the greyhound lying at their feet, or the bird upon their wrists. Nor are the tombs of ladies without their falcon; for this diversion, being of less danger and fatigue than the chase, was shared by the delicate sex.*

It was impossible to repress the eagerness with which the clergy, especially after the barbarians were tempted by rich bishoprics to take upon them the sacred functions, rushed into these secular amusements. Prohibitions of councils, however frequently repeated, produced little effect. In some instances, a particular monastery obtained a dispensation. Thus that of St. Denis, in 774, represented to Charlemagne that the flesh of hunted animals was salutary for sick monks, and that their skins would serve to bind the books in the library.† Reasons equally cogent, we may presume, could not be wanting in every other case. As the bishops and abbots were perfectly feudal lords, and often did not scruple to lead their vassals into the field, it was not to be expected that they should debar themselves of an innocent pastime. It was hardly

* Vie privée des Français, t. i. p. 320.; t. ii. p. 11.

† ibid. t. i. p. 324.

such indeed, when practised at the expense of others. Alexander III., by a letter to the clergy of Berkshire, dispenses with their keeping the archdeacon in dogs and hawks during his visitation.* This season gave jovial ecclesiastics an opportunity of trying different countries. An archbishop of York, in 1321, seems to have carried a train of two hundred persons who were maintained at the expense of the abbeys on his road, and to have hunted with a pack of hounds from parish to parish.† The third council of Lateran, in 1180, had prohibited this amusement on such journies, and restricted bishops to a train of forty or fifty horses.‡

Though hunting had ceased to be a necessary means of procuring food, it was a very convenient resource on which the wholesomeness and comfort, as well as luxury, of the table depended. Before the natural pastures were improved, and new kinds of fodder for cattle discovered, it was impossible to maintain the summer stock during the cold season. Hence a portion of it was regularly slaughtered and salted for winter provision. We may suppose, that when no alternative was offered but these salted meats, even the leanest venison was devoured with relish. There was somewhat more excuse therefore for the severity with which the lords of forests and manors preserved the beasts of chase, than if they had been

* Rymer, t. i. p. 61.

† Whitaker's Hist. of Craven, p. 340. and of Whalley, p. 171.

‡ Velly, Hist. de France, t. iii. p. 236.

considered as merely objects of sport. The laws relating to preservation of game were in every country uncommonly rigorous. They formed in England that odious system of forest-laws, which distinguished the tyranny of our Norman kings. Capital punishment for killing a stag or wild boar was frequent, and perhaps warranted by law, until the charter of John.* The French code was less severe, but even Henry IV. enacted the pain of death against the repeated offence of chasing deer in the royal forests. The privilege of hunting was reserved to the nobility till the reign of Louis IX. who extended it in some degree to persons of lower birth.†

This excessive passion for the sports of the field produced those evils which are apt to result from it; a strenuous idleness, which disdained all useful occupations, and an oppressive spirit towards the peasantry. The devastation committed under the pretence of destroying wild animals, which had been already protected in their depredations, is noticed in serious authors, and has also been the topic of popular ballads.‡ What effect this must have

* John of Salisbury inveighs against the game-laws of his age, with an odd transition from the Gospel to the Pandects. Nec veriti sunt hominem pro unâ bestiolâ perdere, quem unigenitus Dei Filius sanguine redemit suo. Quæ feræ naturæ sunt, et de jure occupantium fiunt, sibi audet humana temeritas vindicare, &c. Policraticus, p. 18.

† Le Grand, Vie privée des Français, t. i. p. 325.

‡ For the injuries which the people sustained from the seignorial rights of the chase, in the eleventh century, see the Recueil des Historiens, in the valuable preface to the eleventh volume, p. 181. This continued to be felt in France down to the revolution, to which it did not perhaps a little contribute. (See Young's Travels in France.) The monstrous privilege of free-warren (monstrous, I mean, when not originally founded

had on agriculture, it is easy to conjecture. The levelling of forests, the draining of morasses, and the extirpation of mischievous animals which inhabit them, are the first objects of man's labour in reclaiming the earth to his use; and these were forbidden by a landed aristocracy, whose controul over the progress of agricultural improvement was unlimited, and who had not yet learned to sacrifice their pleasures to their avarice.

Bad state of agriculture.

These habits of the rich, and the miserable servitude of those who cultivated the land, rendered its fertility unavailing. Predial servitude indeed, in some of its modifications, has always been the great bar to improvement. In the agricultural economy of Rome, the labouring husbandman, a menial slave of some wealthy senator, had not even that qualified interest in the soil which the tenure of villenage afforded to the peasant of feudal ages. Italy, therefore, a country presenting many natural impediments, was but imperfectly reduced into cultivation before the irruption of the barbarians.* That revolution destroyed agriculture with every other art, and succeeding calamities during five or six centuries left the finest regions of Europe unfruitful and desolate. There are but two possible

upon the property of the soil) is recognized by our own laws, though, in this age, it is not often that a court and jury will sustain its exercise. Mr. Walter Scott's ballad of the Wild Huntsman, from a German original, is well known; and, I believe, there are several others in that country not dissimilar in subject.

* Muratori, Dissert. 21. This dissertation contains ample evidence of the wretched state of culture in Italy, at least in the northern parts, both before the irruption of the barbarians, and, in a much greater degree, under the Lombard kings.

modes in which the produce of the earth can be increased; one by rendering fresh land serviceable; the other, by improving the fertility of that which is already cultivated. The last is only attainable by the application of capital and of skill to agriculture; neither of which could be expected in the ruder ages of society. The former is, to a certain extent, always practicable while waste lands remain; but it was checked by laws hostile to improvement, such as the manerial and commonable rights in England, and by the general tone of manners.

Till the reign of Charlemagne there were no towns in Germany, except a few that had been erected on the Rhine and Danube by the Romans. A house with its stables and farm-buildings, surrounded by a hedge or inclosure, was called a court, or, as we find it in our law-books, a curtilage; the toft or homestead of a more genuine English dialect. One of these, with the adjacent domain of arable fields and woods, had the name of a villa or manse. Several manses composed a march; and several marches formed a pagus, or district.* From these elements, in the progress of

* Schmidt, Hist. des Allem. t. i. p. 408. The following passage seems to illustrate Schmidt's account of German villages, in the ninth century, though relating to a different age and country. "A toft," says Dr. Whitaker, "is a homestead in a village, so called from the small tufts of maple, elm, ash and other wood, with which dwelling-houses were anciently over-hung. Even now it is impossible to enter Craven without being struck with the insulated homesteads, surrounded by their little garths, and over-hung with tufts of trees: These are the genuine tofts and crofts of our ancestors, with the substitution only of stone to the wooden crocks and thatched roofs of antiquity." Hist. of Craven, p. 380.

population, arose villages and towns. In France undoubtedly there were always cities of some importance. Country parishes contained several manses or farms of arable land, around a common pasture, where every one was bound by custom to feed his cattle.*

Of internal trade.

The condition even of internal trade was hardly preferable to that of agriculture. There is not a vestige perhaps to be discovered for several centuries of any considerable manufacture; I mean, of working up articles of common utility to an extent beyond what the necessities of an adjacent district required.† Rich men kept domestic artisans among their servants; even kings, in the ninth century, had their clothes made by the women upon their farms;‡ but the peasantry must have been supplied with garments and implements of labour by purchase, and every town, it cannot be doubted, had its weaver, its smith, and its currier. But there were almost insuperable impediments to any extended traffic; the insecurity of moveable wealth, and difficulty of accumulating it; the ignorance of mutual wants; the peril of robbery in conveying merchandize, and the certainty of ex-

* It is laid down in the Speculum Saxonicum, a collection of feudal customs which prevailed over most of Germany, that no one might have a separate pasture for his cattle, unless he possessed three mansi. Du Cange, Mansus. There seems to have been a price paid, I suppose to the lord, for agistment in the common pasture.

† The only mention of a manufacture, as early as the ninth or tenth centuries, that I remember to have met with, is in Schmidt, t. ii. p. 146. who says that cloths were exported from Friseland to England and other parts. He quotes no authority, but has not advanced the fact, I am satisfied, gratuitously.

‡ Schmidt, t. i. p. 411.; t. ii. p. 146.

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tortion. In the domains of every lord, a toll was to be paid in passing his bridge, or along his highway, or at his market.* These customs, equitable and necessary in their principle, became in practice oppressive, because they were arbitrary, and renewed in every petty territory which the road might intersect. Several of Charlemagne's capitularies repeat complaints of these exactions, and endeavour to abolish such tolls as were not founded on prescription.† One of them rather amusingly illustrates the modesty and moderation of the landholders. It is enacted that no one shall be compelled to go out of his way in order to pay toll at a particular bridge, when he can cross the river more conveniently at another place.‡ These provisions, like most others of that age, were unlikely to produce much amendment. It was only the milder species, however, of feudal lords who were content with the tribute of merchants. The more ravenous descended from their fortresses to pillage the wealthy traveller, or shared in the spoil of inferior plunderers, whom they both protected and instigated. Proofs occur, even in the later periods of the middle ages, when government had regained its energy, and civilization had made considerable progress, of public robberies systematically perpetrated by men of noble rank. In the more savage

* Du Cange, Pedagium, Pontaticum, Teloneum, Mercatum, Stallagium, Lastagium, &c.

† Baluz. Capit. p. 621. and alibi.

‡ Ut nullus cogatur ad pontem ire ad fluvium transeundum propter telonei causas quando ille in alio loco compendiosius illud flumen transire potest. p. 764. et alibi.

times, before the twelfth century, they were probably too frequent to excite much attention. It was a custom in some places to way-lay travellers, and not only to plunder, but to sell them as slaves, or compel them to pay a ransom. Harold son of Godwin, having been wrecked on the coast of Ponthieu, was imprisoned by the lord, says an historian, according to the custom of that territory.* Germany appears to have been, upon the whole, the country where downright robbery was most unscrupulously practised by the great. Their castles, erected on almost inaccessible heights among the woods, became the secure receptacles of predatory bands, who spread terror over the country. From these barbarian lords of the dark ages, as from a living model, the romancers are said to have drawn their giants and other disloyal enemies of true chivalry. Robbery indeed is the constant theme both of the Capitularies and of the Anglo-Saxon laws; one has more reason to wonder at the intrepid thirst of lucre, which induced a very few merchants to exchange the products of different regions, than to ask why no general spirit of commercial activity prevailed.

And of foreign commerce.

Under all these circumstances, it is obvious that very little of oriental trade could have existed in these western countries of Europe. Destitute as they have been created, speaking comparatively, of natural productions fit for exportation, their

* Eadmer apud Recueil des Historiens des Gaules, t. xi. preface, p. 192. Pro ritu illius loci, a domino terræ captivitati addicitur.

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invention and industry are the great resources from which they can supply the demands of the east. Before any manufactures were established in Europe, her commercial intercourse with Egypt and Asia must of necessity have been very trifling; because, whatever inclination she might feel to enjoy the luxuries of those genial regions, she wanted the means of obtaining them. It is not therefore necessary to rest the miserable condition of oriental commerce upon the Saracen conquests, because the poverty of Europe is an adequate cause; and, in fact, what little traffic remained was carried on with no material inconvenience through the channel of Constantinople. Venice took the lead in trading with Greece and more eastern countries.* Amalfi had the second place in the commerce of those dark ages. These cities imported, besides natural productions, the fine cloths of Constantinople; yet as this traffic seems to have been illicit, it was not probably extensive.† Their exports were gold and silver, by which, as

* Heeren has frequently referred to a work published in 1789, by Marini, intitled, Storia civile e politica del Commerzio de' Veneziani, which casts a new light upon the early relations of Venice with the east. Of this book I know nothing; but a memoir by de Guignes, in the thirty-seventh volume of the Academy of Inscriptions, on the commerce of France with the east before the crusades, is singularly unproductive; the fault of the subject, not of the author.

† There is an odd passage in Luitprand's relation of his embassy from the Emperor Otho to Nicephorus Phocas. The Greeks making a display of their dress, he told them that in Lombardy the common people wore as good clothes as they. How, they said, can you procure them? Through the Venetian and Amalfitan dealers, he replied, who gain their subsistence by selling them to us. The foolish Greeks were very angry, and declared that any dealer presuming to export their fine cloths should be flogged. Luitprandi Opera, p. 155. edit. Antwerp 1640.

none was likely to return, the circulating money of Europe was probably less in the eleventh century than at the subversion of the Roman empire; furs, which were obtained from the Sclavonian countries; and arms, the sale of which to pagans or Saracens was vainly prohibited by Charlemagne and by the Holy See.* A more scandalous traffic, and one that still more fitly called for prohibitory laws, was carried on in slaves. It is an humiliating proof of the degradation of Christendom, that the Venetians were reduced to purchase the luxuries of Asia, by supplying the slave-market of the Saracens.† Their apology would perhaps have been, that these were purchased from their heathen neighbours; but a slave-dealer was probably not very inquisitive as to the faith or origin of his victim. This trade was not peculiar to Venice. In England, it was very common, even after the conquest, to export slaves to Ireland; till, in the reign of Henry II., the Irish came to a non-importation agreement which put a stop to the practice.‡

* Baluz. Capitul. p. 775. One of the main advantages which the Christian nations possessed over the Saracens was the coat of mail, and other defensive armour; so that this prohibition was founded upon very good political reasons.

† Schmidt, Hist. des Allem. t. ii. p. 146. Heeren, sur l'Influence des Croisades, p. 316. In Baluze, we find a law of Carloman, brother of Charlemagne; Ut mancipia Christiana paganis non vendantur. Capitularia, t. i. p. 150. vide quoque p. 651.

‡ William of Malmsbury accuses the Anglo-Saxon nobility of selling their female servants, even when pregnant by them, as slaves to foreigners, p. 102. I hope there were not many of these Yaricoes; and should not perhaps have given credit to an historian, rather prejudiced against the English, if I had not found too much authority for the general practice. In the

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From this state of degradation and poverty, all the countries of Europe have recovered, with a progression in some respects tolerably uniform, in others more unequal; and the course of their improvement, more gradual, and less dependent upon conspicuous civil revolutions than their decline, affords one of the most interesting subjects into which a philosophical mind can inquire. The commencement of this restoration has usually been dated from about the close of the eleventh century; though it is unnecessary to observe, that the subject does not admit of any thing approximating to chronological accuracy. It may therefore be sometimes not improper to distinguish the six first of the ten centuries which the present work embraces, under the appellation of the *dark* ages; an epithet which I do not extend to the twelfth and three following. In tracing the decline of society from the subversion of the Roman empire, we have been led, not without connexion, from ignorance to superstition, from superstition to vice and lawlessness, and from thence to general rudeness and poverty. I shall pursue an inverted order in passing along the ascending scale, and

canons of a council at London in 1102, we read: Let no one from henceforth presume to carry on that wicked traffic; by which men in England have hitherto been sold like brute animals. Wilkins's Concilia, t. i. p. 383. And Giraldus Cambrensis says that the English before the conquest were generally in the habit of selling their children and other relations to be slaves in Ireland, without having even the pretext of distress or famine, till the Irish, in a national synod, agreed to emancipate all the English slaves in the kingdom. id. p. 471. This seems to have been designed to take away all pretext for the threatened invasion of Henry II. Lyttleton, vol. iii. p. 70.

class the various improvements which took place between the twelfth and fifteenth centuries, under three principal heads, as they relate to the wealth, the manners, or the taste and learning of Europe. Different arrangements might probably be suggested, equally natural and convenient; but in the disposition of topics that have not always an unbroken connexion with each other, no method can be prescribed as absolutely more scientific than the rest. That which I have adopted appears to me as philosophical and as little liable to transitions as any other.

PART II.

Progress of Commercial Improvement in Germany, Flanders and England—In the North of Europe—In the Countries upon the Mediterranean Sea—Maritime Laws—Usury—Banking Companies—Progress of Refinement in Manners—Domestic Architecture—Ecclesiastical Architecture—State of Agriculture in England—Value of Money—Improvement of the Moral Character of Society—its Causes—Police—Changes in Religious Opinion—Various Sects—Chivalry—its Progress, Character and Influence—Causes of the Intellectual Improvement of European Society—1. The Study of Civil Law—2. Institution of Universities—their Celebrity—Scholastic Philosophy—3. Cultivation of Modern Languages—Provençal Poets—Norman Poets—French Prose Writers—Italian—early Poets in that Language—Dante—Petrarch—English Language—its Progress—Chaucer—4. Revival of Classical Learning—Latin Writers of the Twelfth Century—Literature of the Fourteenth Century—Greek Literature—its Restoration in Italy—Invention of Printing.

European commerce.

THE geographical position of Europe naturally divides its maritime commerce into two principal regions; one comprehending those countries which border on the Baltic, the German and the Atlantic oceans; another, those situated around the Mediterranean sea. During the four centuries which preceded the discovery of America, and especially the two former of them, this separation was more remarkable than at present, inasmuch as their intercourse, either by land or sea, was extremely limited. To the first region belonged the Netherlands, the coasts of France,

Germany, and Scandinavia, and the maritime districts of England. In the second we may class the provinces of Valencia and Catalonia, those of Provence and Languedoc, and the whole of Italy.

Woollen manufacture of Flanders.

1. The former, or northern division, was first animated by the woollen manufacture of Flanders. It is not easy either to discover the early beginnings of this, or to account for its rapid advancement. The fertility of that province and its facilities of interior navigation were doubtless necessary causes; but there must have been some temporary encouragement from the personal character of its sovereigns, or other accidental circumstances. Several testimonies to the flourishing condition of Flemish manufactures occur in the twelfth century, and some might perhaps be found even earlier.* A writer of the thirteenth asserts that all the world was clothed from English wool wrought in Flanders.† This indeed is an exaggerated vaunt; but the Flemish stuffs were probably sold wherever the sea or a navigable river permitted them to be carried. Cologne was the chief trading city upon the Rhine; and its merchants, who had been considerable even under the Emperor Henry IV., established a factory at London in 1220. The woollen manufac-

* Macpherson's Annals of Commerce, vol. i. p. 270. Meyer ascribes the origin of Flemish trade to Baldwin, count of Flanders in 958, who established markets at Bruges and other cities. Exchanges were in that age, he says, chiefly effected by barter, little money circulating in Flanders. Annales Flandrici, fol. 18. (edit. 1561.)

† Matthew Westmonast. apud Macpherson's Annals of Commerce, vol. i. p. 415.

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ture, notwithstanding frequent wars and the impolitic regulations of magistrates,* continued to flourish in the Netherlands, (for Brabant and Hainault shared it in some degree with Flanders,) until England became not only capable of supplying her own demand, but a rival in all the marts of Europe. All Christian kingdoms, and even the Turks themselves, says an historian of the sixteenth century, lamented the desperate war between the Flemish cities and their count Louis, that broke out in 1380. For at that time Flanders was a market for the traders of all the world. Merchants from seventeen kingdoms had their settled domiciles at Bruges, besides strangers from almost unknown countries who repaired thither.† During this war, and on all other occasions, the weavers both of Ghent and Bruges distinguished themselves by a democratical spirit, the consequence no doubt of their numbers and prosperity.‡ Ghent was one of the largest cities in Europe, and in the opinion of many the best situ-

* Such regulations scared away those Flemish weavers who brought their art into England under Edward III. Macpherson, p. 467. 494. 546. Several years later, the magistrates of Ghent are said by Meyer, (Annales Flandrici, fol. 156.) to have imposed a tax on every loom. Though the seditious spirit of the weavers' company had perhaps justly provoked them, such a tax on their staple manufacture was a piece of madness, when English goods were just coming into competition.

† Terrâ marique mercatura, rerumque commercia et quæstus péribant. Non solum totius Europæ mercatores, verum etiam ipsi Turcæ aliæque sepositæ nationes ob bellum istud Flandriæ magno afficiebantur dolore. Erat nempe Flandria totius prope orbis stabile mercatoribus emporium. Septemdecim regnorum negotiatores tum Brugis suâ certa habuere domicilia ac sedes, præter complures incognitas pæne gentes quæ undique confluebant. Meyer, fol. 205. ad ann. 1385.

‡ Meyer, Froissart, Comines.

ated.* But Bruges, though in circuit but half the former, was more splendid in its buildings, and the seat of far more trade; being the great staple both for Mediterranean and northern merchandize.† Antwerp, which early in the sixteenth century drew away a large part of this commerce from Bruges, was not considerable in the preceding ages; nor were the towns of Zealand and Holland much noted except for their fisheries, though those provinces acquired in the fifteenth century some share of the woollen manufacture.

Export of wool from England.

For the two first centuries after the conquest, our English towns, as has been observed in a different place, made some forward steps towards improvement, though still very inferior to those of the continent. Their commerce was almost confined to the exportation of wool, the great staple commodity of England, upon which, more than any other, in its raw or manufactured state, our wealth has been founded. A woollen manufacture, however, indisputably existed under

* It contained, according to Ludovico Guicciardini, 85,000 houses, and the circuit of its walls was 45,640 Roman feet. Description des Païs Bas, p. 350, &c. (edit. 1609.) Part of this inclosure was not built upon. The population of Ghent is not conjectured by Guicciardini, and in his time it must have greatly declined. It is much exaggerated by earlier writers. And I entertain some doubts as to Guicciardini's estimate of the number of houses. If at least he was accurate, more than half of the city must since have been demolished, or become uninhabited, which its present appearance does not indicate; for Ghent, though not very flourishing, by no means presents the decay and dilapidation of an Italian town.

† Guicciardini, p. 362. Mém. de Comines, l. v. c. 17. Meyer, fol. 354. Macpherson's Annals of Commerce, vol. i. p. 647. 651.

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Henry II.;* it is noticed in regulations of Richard I.; and by the importation of woad under John, it may be inferred to have still flourished. The disturbances of the next reign, perhaps, or the rapid elevation of the Flemish towns, retarded its growth; though a remarkable law was passed by the Oxford parliament in 1261, prohibiting the export of wool, and the importation of cloth. This, while it shews the deference paid by the discontented barons who predominated in that parliament, to their confederates the burghers, was evidently too premature to be enforced. We may infer from it, however, that cloths were made at home, though not sufficiently for the people's consumption.†

Prohibitions of the same nature, though with a different object, were frequently imposed on the trade between England and Flanders by Edward I. and his son. As their political connexions fluctuated, these princes gave full liberty and settlement to the Flemish merchants, or banished them at once from the country.‡ Nothing could be more injurious to England than this arbitrary

* Blomefield, the historian of Norfolk, thinks that a colony of Flemings settled as early as this reign at Worsted, a village in that county, and immortalized its name by their manufacture. It soon reached Norwich, though not conspicuous till the reign of Edward I. Hist. of Norfolk, vol. ii. Macpherson speaks of it for the first time in 1327. There were several gilds of weavers in the time of Henry II. Lyttleton, vol. ii. p. 174.

† Macpherson's Annals of Commerce, vol. i. p. 412. from Walter Hemingford. I am considerably indebted to this laborious and useful publication, which has superseded that of Anderson.

‡ Rymer, t. ii. pp. 32. 50. 737. 949. 965.; t. iii. pp. 533. 1106. et alibi.

vacillation, which, I think, proves Edward I. to have been a less wise and enlightened sovereign than he has been esteemed. The Flemings were in every respect our natural allies; but besides those connexions with France, the constant enemy of Flanders, into which both the Edwards occasionally fell, a mutual alienation had been produced by the trade of the former people with Scotland, a trade too lucrative to be resigned at the king of England's request.* An early instance of that conflicting selfishness of belligerents and neutrals, which was destined to aggravate the animosities and misfortunes of our own time!†

English woollen manufacture.

A more prosperous æra began with Edward III., the father, as he may almost be called, of English commerce, a title, not indeed more glorious, but by which he may perhaps claim more of our gratitude than as the hero of Crecy. In 1331, he took advantage of discontents among the manufacturers of Flanders, to invite them as settlers into his dominions.‡ They brought the finer manufacture of woollen cloths, which had been un-

* Rymer, t. iii. p. 759. A Flemish factory was established at Berwick about 1286. Macpherson.

† In 1295, Edward I. made masters of neutral ships in English ports find security not to trade with France. Rymer, t. ii. p. 679.

‡ Rymer, t. iv. p. 491, &c. Fuller draws a notable picture of the inducements held out to the Flemings. "Here they should feed on fat beef and mutton, till nothing but their fullness should stint their stomachs; their beds should be good, and their bedfellows better, seeing the richest yeomen in England would not disdain to marry their daughters unto them, and such the English beauties, that the most envious foreigners could not but commend them." Fuller's Church History, quoted in Blomefield's Hist. of Norfolk.

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known in England. The discontents alluded to resulted from the monopolizing spirit of their corporations, who oppressed all artisans without the pale of their community. The history of corporations brings home to our minds one cardinal truth, that political institutions have very frequently but a relative and temporary usefulness, and that what forwarded improvement during one part of its course, may prove to it in time a most pernicious obstacle. Corporations in England, we may be sure, wanted nothing of their usual character; and it cost Edward no little trouble to protect his colonists from their selfishness, and from the blind nationality of the vulgar.* The emigration of Flemish weavers into England continued during this reign, and we find it mentioned, at intervals, for more than a century.

Increase of English commerce.

Commerce now became, next to liberty, the leading object of parliament. Far the greater part of our statutes from the accession of Edward III. bear relation to this subject; not always well devised, or liberal, or consistent, but by no means worse in those respects than such as have been enacted in subsequent ages. The occupation of a merchant became honourable; and notwithstanding the natural jealousy of the two classes, he was placed in some measure on a footing with landed proprietors. By the statute of apparel, in 37 Edw. III., merchants and artificers who had five hundred pounds value in goods and chattels

* Rymer, t. v. p. 137. 430. 540.

might use the same dress as squires of one hundred pounds a year. And those who were worth more than this, might dress like men of double that estate. Wool was still the principal article of export, and source of revenue. Subsidies granted by every parliament upon this article were, on account of the scarcity of money, commonly taken in kind. To prevent evasion of this duty seems to have been the principle of those multifarious regulations, which fix the staple, or market for wool, in certain towns, either in England, or, more commonly, on the continent. To these all wool was to be carried, and the tax was there collected. It is not easy, however, to comprehend the drift of all the provisions relating to the staple, many of which, tend to benefit foreign at the expense of English merchants. By degrees, the exportation of woollen cloths increased so as to diminish that of the raw material, but the latter was not absolutely prohibited during the period under review;* although some restrictions were imposed upon it by Edward IV. For a much earlier statute, in in the 11th of Edward III., making the exportation of wool a capital felony, was in its terms provisional, until it should be otherwise ordered by

* In 1409, woollen cloths formed great part of our exports, and were extensively used over Spain and Italy. And in 1449, English cloths having been prohibited by the duke of Burgundy, it was enacted, that, until he should repeal this ordinance, no merchandize of his dominions should be admitted into England. 27 H. VI. c. 1. The system of prohibiting the import of foreign wrought goods was acted upon very extensively in Edward IV.'s reign.

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the council; and the king almost immediately set it aside.*

Manufactures of France and Germany.

A manufacturing district, as we see in our own country, sends out, as it were, suckers into all its neighbourhood. Accordingly, the woollen manufacture spread from Flanders along the banks of the Rhine, and into the northern provinces of France.† I am not, however, prepared to trace its history in these regions. In Germany, the privileges conceded by Henry V. to the free cities, and especially to their artisans, gave a soul to

* Stat. 11 E. III. c. 1. Blackstone says that transporting wool out of the kingdom, to the detriment of our staple manufacture, was forbidden at common law, (vol. iv. c. 12.) not recollecting, that we had no staple manufactures in the ages when the common law was formed, and that the export of wool was almost the only means by which this country procured silver, or any other article of which it stood in need, from the continent. In fact, the landholders were so far from neglecting this source of their wealth, that a minimum was fixed upon it, by a statute of 1343 (repealed indeed the next year 18 E. III. c. 3.) below which price it was not to be sold; from a laudable apprehension, as it seems, that foreigners were getting it too cheap. And this was revived in the 32d of H. VI. though the act is not printed among the statutes. Rot. Parl. t. v. p. 275. The exportation of sheep was prohibited in 1338. Rymer, t. v. p. 36.; and by act of parliament in 1425. 3 H. VI. c. 2. But this did not prevent our improving the wool of a foreign country to our own loss. It is worthy of notice, that English wool was superior to any other for fineness during these ages. Henry II., in his patent to the Weavers' Company, directs that if any weaver mingled Spanish wool with English, it should be burned by the lord mayor. Macpherson, p. 382. An English flock transported into Spain about 1348 is said to have been the source of the fine Spanish wool. ibid. p. 539. But the superiority of English wool, even as late as 1438, is proved by the laws of Barcelona, forbidding its adulteration. p. 654. Another exportation of English sheep to Spain took place about 1465, in consequence of a commercial treaty. Rymer, t. xi. p. 534. et alibi. In return, Spain supplied England with horses, her breed of which was reckoned the best in Europe; so that the exchange was tolerably fair. Macpherson. p. 596. The best horses had been very dear in England, being imported from Spain and Italy. ibid.

† Schmidt, t. iv. p. 18.

industry; though the central parts of the empire were, for many reasons, very ill calculated for commercial enterprize during the middle ages.* But the French towns were never so much emancipated from arbitrary power as those of Germany or Flanders; and the evils of exorbitant taxation, with those produced by the English wars, conspired to retard the advance of manufactures in France. That of linen made some little progress; but this work was still perhaps chiefly confined to the labour of female servants.†

Baltic trade.

The manufactures of Flanders and England found a market, not only in these adjacent countries, but in a part of Europe which for many ages had only been known enough to be dreaded. In the middle of the eleventh century, a native of Bremen, and a writer much superior to most others of his time, was almost entirely ignorant of the geography of the Baltic; doubting whether any one had reached Russia by that sea, and reckoning Esthonia and Courland among its islands.‡ But in one hundred years more, the maritime regions of Mecklenburg

* Considerable woollen manufactures appear to have existed in Picardy about 1315. Macpherson ad annum. Capmany, t. iii. part 2. p. 151.

† The sheriffs of Wiltshire and Sussex are directed in 1253, to purchase for the king 1000 ells of fine linen, lineæ telæ pulchræ et delicatæ. This Macpherson supposes to be of domestic manufacture, which, however, is not demonstrable. Linen was made at that time in Flanders; and as late as 1417, the fine linen used in England was imported from France and the Low Countries. Macpherson, from Rymer, t. ix. p. 334. Velly's history is defective in giving no account of French commerce and manufactures, or at least none that is at all satisfactory.

‡ Adam Bremensis de Situ Daniæ, p. 13. (Elzevir edit.)

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and Pomerania, inhabited by a tribe of heathen Sclavonians, were subdued by some German princes; and the Teutonic order some time afterwards, having conquered Prussia, extended a line of at least comparative civilization as far as the gulf of Finland. The first town erected on the coasts of the Baltic was Lubec, which owes its foundation to Adolphus, count of Holstein, in 1140. After several vicissitudes, it became independent of any sovereign but the emperor in the thirteenth century. Hamburgh and Bremen, upon the other side of the Cimbric peninsula, emulated the prosperity of Lubec; the former city purchased independence of its bishop in 1225. A colony from Bremen founded Riga in Livonia, about 1192. The city of Dantzic grew into importance about the end of the following century. Konigsberg was founded by Ottocar king of Bohemia in the same age.

But the real importance of these cities is to be dated from their famous union into the Hanseatic confederacy. The origin of this is rather obscure, but it may certainly be nearly referred in point of time to the middle of the thirteenth century,* and accounted for by the necessity of mutual defence, which piracy by sea and pillage by land had taught the merchants of Germany. The nobles endeavoured to obstruct the formation of this league, which indeed was in great measure designed to

* Schmidt, t. iv. p. 8. Macpherson, p. 392. The latter writer thinks they were not known by the name of Hanse so early.

withstand their exactions. It powerfully maintained the influence which the free imperial cities were at this time acquiring. Eighty of the most considerable places constituted the Hanseatic confederacy, divided into four colleges, whereof Lubec, Cologne, Brunswic and Dantzic were the leading towns. Lubec held the chief rank, and became, as it were, the patriarchal see of the league; whose province it was to preside in all general discussions for mercantile, political, or military purposes, and to carry them into execution. The league had four principal factories in foreign parts, at London, Bruges, Bergen and Novogorod; endowed by the sovereigns of those cities with considerable privileges, to which every merchant belonging to a Hanseatic town was entitled.* In England the German guildhall or factory was established by concession of Henry III.; and in later periods, the Hanse traders were favoured above any others in the capricious vacillations of our mercantile policy.† The English had also their factories on the Baltic coast as far as Prussia, and in the dominions of Denmark.‡

Rapid progress of English trade.

This opening of a northern market powerfully accelerated the growth of our own commercial opulence, especially after the woollen manufacture had begun to thrive. From about the middle of the fourteenth century, we find continual evidences of a rapid increase in wealth. Thus, in 1363,

* Pfeffel, t. i. p. 443. Schmidt, t. iv. p. 18.; t. v. p. 512. Macpherson's Annals, vol i. p. 693.

† Macpherson, vol. i. passim.

‡ Rymer, t. viii. p. 360.

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Picard, who had been lord mayor some years before, entertained Edward III., and the Black Prince, the kings of France, Scotland and Cyprus, with many of the nobility, at his own house in the Vintry, and presented them with handsome gifts.* Philpot, another eminent citizen, in Richard II.'s time, when the trade of England was considerably annoyed by privateers, hired 1000 armed men, and dispatched them to sea, where they took fifteen Spanish vessels with their prizes.† We find Richard obtaining a great deal from private merchants and trading towns. In 1379, he got £5000 of London, 1000 marks of Bristol, and in proportion from smaller places. In 1386, London gave £4000 more, and 10,000 marks in 1397.‡ The latter sum was obtained also for the coronation of Henry VI.§ Nor were the contributions of individuals contemptible, considering the high value of money. Hinde, a citizen of London, lent to Henry IV. £2000 in 1407, and Whittington one half of that sum. The merchants of the staple advanced £4000 at the same time.‖ Our commerce continued to be regularly and rapidly progressive during the fifteenth century. The famous Canynges of Bristol, under Henry VI. and Edward IV., had ships of 900 tons burthen.¶ The trade and even the internal wealth of England reached so much higher

* Macpherson, (who quotes Stow,) p. 415.
† Walsingham, p. 211.
‡ Rymer, t. vii. p. 210. 341.; t. viii. p. 9.
§ Rymer, t. x. p. 461.
‖ Rymer, t. viii. p. 488.
¶ Macpherson, p. 667.

a pitch in the reign of the last mentioned king than at any former period, that we may perceive the wars of York and Lancaster to have produced no very serious effect on national prosperity. Some battles were doubtless sanguinary; but the loss of lives in battle is soon repaired by a flourishing nation; and the devastation occasioned by armies was both partial and transitory.

Intercourse with the south of Europe.

A commercial intercourse between these northern and southern regions of Europe began about the early part of the fourteenth century, or, at most, a little sooner. Until indeed the use of the magnet was thoroughly understood, and a competent skill in marine architecture, as well as navigation, acquired, the Italian merchants were scarce likely to attempt a voyage perilous in itself, and rendered more formidable by the imaginary difficulties which had been supposed to attend an expedition beyond the straits of Hercules. But the English, accustomed to their own rough seas, were always more intrepid, and probably more skillful navigators. Though it was extremely rare even in the fifteenth century for an English trading vessel to appear in the Mediterranean,* yet a famous mili-

* Richard III., in 1485, appointed a Florentine merchant to be English consul at Pisa, on the ground that some of his subjects intended to trade to Italy. Macpherson, p. 705. from Rymer. Perhaps we cannot positively prove the existence of a Mediterranean trade at an earlier time; and even this instrument is not conclusive. But a considerable presumption arises from two documents in Rymer, of the year 1412, which inform us of a great shipment of wool and other goods made by some merchants of London for the Mediterranean, under supercargoes, whom, it being a new undertaking, the king expressly recommended to the Genoese republic. But that people, impelled probably by commercial jealousy,

tary armament, that destined for the crusade of Richard I., displayed at a very early time the seamanship of our countrymen. In the reign of Edward II., we find mention in Rymer's collection of Genoese ships trading to Flanders and England. His son was very solicitous to preserve the friendship of that opulent republic; and it is by his letters to the senate, or by royal orders restoring ships unjustly seized, that we come by a knowledge of those facts, which historians neglect to relate. Pisa shared a little in this traffic, and Venice more considerably; but Genoa was beyond all competition at the head of Italian commerce in these seas during the fourteenth century. In the next, her general decline left it more open to her rival; but I doubt whether Venice ever maintained so strong a connexion with England. Through London, and Bruges, their chief station in Flanders, the merchants of Italy and of Spain transported oriental produce to the farthest parts of the north. The inhabitants of the Baltic coasts were stimulated by the desire of precious luxuries

seized the vessels and their cargoes; which induced the king to grant the owners letters of reprisal against all Genoese property. Rymer, t. viii. p. 717. 773. Though it is not perhaps evident that the vessels were English, the circumstances render it highly probable. The bad success, however, of this attempt might prevent its imitation. A Greek author about the beginning of the fifteenth century reckons the Ιγγλινοι among the nations who traded to a port in the Archipelago. Gibbon, vol. xii. p. 52. But these enumerations are generally swelled by vanity or the love of exaggeration; and a few English sailors on board a foreign vessel would justify the assertion. Benjamin of Tudela, a Jewish traveller, pretends that the port of Alexandria, about 1160, contained vessels not only from England, but from Russia, and even *Cracow*. Harris's Voyages, vol. i. p. 554.

which they had never known; and these wants, though selfish and frivolous, are the means by which nations acquire civility, and the earth is rendered fruitful of its produce. As the carriers of this trade, the Hanseatic merchants resident in England and Flanders derived profits through which eventually of course those countries were enriched. It seems that the Italian vessels unloaded at the marts of London or Bruges, and that such part of their cargoes as were intended for a more northern trade came there into the hands of the German merchants. In the reign of Henry VI., England carried on a pretty extensive traffic with the countries around the Mediterranean, for whose commodities her wool and woollen cloths enabled her to pay.

Commerce of the Mediterranean countries.

The commerce of the southern division, though it did not, I think, produce more extensively beneficial effects upon the progress of society, was both earlier and more splendid than that of England, and the neighbouring countries. Besides Venice, which has been mentioned already, Amalfi kept up the commercial intercourse of Christendom with the Saracen countries before the first crusade.* It

Amalfi.

* The Amalfitans are thus described by William of Apulia, apud Muratori, Dissert. 30.

Urbs hæc dives opum, populoque referta videtur,
Nulla magis locuples argento, vestibus, auro.
Partibus innumeris ac plurimus urbe moratur
Nauta, maris cœlique vias aperire peritus.
Huc et Alexandri diversa feruntur ab urbe.
Regis et Antiochi. Hæc[etiam?] freta plurima transit.
Hic Arabes, Indi, Siculi noscuntur, et Afri.
Hæc gens est totum prope nobilitata per orbem,
Et mercanda ferens, et amans mercata referre.

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was the singular fate of this city to have filled up the interval between two periods of civilization, in neither of which she was destined to be distinguished. Scarcely known before the end of the sixth century, Amalfi ran a brilliant but short career, as a free and trading republic, which was checked by the arms of a conqueror in the middle of the twelfth. Since her subjugation by Roger king of Sicily, the name of a people who for a while connected Europe with Asia has hardly been repeated, except for two discoveries falsely imputed to them, those of the Pandects and of the compass.

Pisa, Genoa, Venice.

But the decline of Amalfi was amply compensated to the rest of Italy by the constant elevation of Pisa, Genoa, and Venice in the twelfth and ensuing ages. The crusades led immediately to this growing prosperity of the commercial cities. Besides the profit accruing from so many naval armaments which they supplied, and the continual passage of private adventurers in their vessels, they were enabled to open a more extensive channel of oriental traffic than had hitherto been known. These three Italian republics enjoyed immunities in the Christian principalities of Syria; possessing separate quarters in Acre, Tripoli, and other cities, where they were governed by their own laws and magistrates. Though the progress of commerce must, from the condition of European industry, have been slow, it was uninterrupted; and the settlements in Palestine were becoming important as factories, an use of which Godfrey and Urban little dreamed, when they were lost through the guilt

and imprudence of their inhabitants.* Villani laments the injury sustained by commerce in consequence of the capture of Acre, "situated, as it was, on the coast of the Mediterranean, in the centre of Syria, and, as we might say, of the habitable world, a haven for all merchandize, both from the East, and the West, which all the nations of the earth frequented for this trade."† But the loss was soon retrieved, not perhaps by Pisa and Genoa, but by Venice, who formed connexions with the Saracen governments, and maintained her commercial intercourse with Syria and Egypt by their license, though subject probably to heavy exactions. Sanuto, a Venetian author at the beginning of the fourteenth century, has left a curious account of the Levant trade which his countrymen carried on at that time. Their imports it is easy to guess, and it appears that timber, brass, tin, and lead, as well as the precious metals, were exported to Alexandria, besides oil, saffron, and some of the productions of Italy, and even wool and woollen cloths.‡ The European side of the account had therefore become respectable.

The commercial cities enjoyed as great privileges at Constantinople as in Syria, and they bore an eminent part in the vicissitudes of the Eastern empire. After the capture of Constantinople by the

* The inhabitants of Acre were noted, in an age not very pure, for the excess of their vices. In 1291, they plundered some of the subjects of a neighbouring Mohammedan prince, and refusing reparation, the city was besieged and taken by storm. Muratori, ad ann. Gibbon, c. 59.

† Villani, l. vii. c. 144.

‡ Macpherson, p. 490.

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Latin crusaders, the Venetians having been concerned in that conquest, became of course the favoured traders under the new dynasty; possessing their own district in the city, with their magistrate or podestà, appointed at Venice, and subject to the parent republic. When the Greeks recovered the seat of their empire, the Genoese, who from jealousy of their rivals had contributed to that revolution, obtained similar immunities. This powerful and enterprizing state, in the fourteenth century, sometimes the ally, sometimes the enemy of the Byzantine count, maintained its independent settlement at Pera. From thence she spread her sails into the Euxine, and, planting a colony at Caffa in the Crimea, extended a line of commerce with the interior regions of Asia, which even the skill and spirit of our own times has not yet been able to revive.*

* Capmany, Memorias Historicas, t. iii. preface, p. 11.; and part ii. p. 181. His authority is Balducci Pegalotti, a Florentine writer upon commerce about 1340, whose work I have never seen. It appears from Balducci, that the route to China was from Azoph to Astrakan, and thence by a variety of places which cannot be found in modern maps, to Cambalu, probably Pekin, the capital city of China, which he describes as being one hundred miles in circumference. The journey was of rather more than eight months, going and returning; and he assures us it was perfectly secure, not only for caravans, but for a single traveller with a couple of interpreters and a servant. The Venetians had also a settlement in the Crimea, and appear by a passage in Petrarch's letters, to have possessed some of the trade through Tartary. In a letter written from Venice, after extolling in too rhetorical a manner the commerce of that republic, he mentions a particular ship, that had just sailed for the Black Sea. Et ipsa quidem Tanaim it visura, nostri enim maris navigatio non ultra tenditur; eorum vero aliqui, quos hæc fert, illic iter [instituent] eam egressuri, nec antea substituri, quam Gange et Caucaso superato, ad Indos atque extremos Seres et Orientalem perveniatur Oceanum. En quo ardens et inexplebilis habendi sitis hominum mentes rapit! Petrarcæ Opera, Senil. l. ii. ep. 3. p. 760. edit. 1581.

The French provinces which border on the Mediterranean Sea partook in the advantages which it offered. Not only Marseilles, whose trade had continued in a certain degree throughout the worst ages, but Narbonne, Nismes, and especially Montpelier, were distinguished for commercial prosperity.* A still greater activity prevailed in Catalonia. From the middle of the thirteenth century (for we need not trace the rudiments of its history) Barcelona began to emulate the Italian cities in both the branches of naval energy, war and commerce. Engaged in frequent and severe hostilities with Genoa, and sometimes with Constantinople, while their vessels traded to every part of the Mediterranean, and even of the English channel, the Catalans might justly be reckoned among the first of maritime nations. The commerce of Barcelona has never since attained so great a height as in the fifteenth century.†

Their manufactures.

The introduction of a silk manufacture at Palermo, by Roger Guiscard in 1148, gave perhaps the earliest impulse to the industry of Italy. Nearly about the same time, the Genoese plundered two Moorish cities of Spain, from which they derived the same art. In the next age, this became a staple manufacture of the Lombard and Tuscan republics, and the cultivation of mulberries was enforced by their laws.‡ Woollen stuffs, though the trade was

* Hist. de Languedoc, t. iii. p. 531.; t. iv. p. 517. Mém. de l'Acad. des Inscriptions, t. xxxvii.

† Capmany, Memorias Historicas de Barcelona, t. i. part. 2. See particularly p. 36.

‡ Muratori, Dissert. 30. Denina, Rivoluzione d'Italia, l. xiv. c.

perhaps less conspicuous than that of Flanders, and though many of the coarser kinds were imported from thence, employed a multitude of workmen in Italy, Catalonia, and the south of France.* Among the trading companies into which the middling ranks were distributed, those concerned in silk and woollens were most numerous and honourable.†

Invention of the mariner's compass.

A property of a natural substance, long overlooked even though it attracted observation by a different peculiarity, has influenced by its accidental discovery the fortunes of mankind, more than all the deductions of philosophy. It is perhaps impossible to ascertain the epoch when the polarity of the magnet was first known in Europe. The common opinion, which ascribes its discovery to a citizen of Amalfi in the fourteenth century, is undoubtedly erroneous. Guiot de Provins, a French poet who lived about the year 1200, or at the latest, under St. Louis, describes it in the most unequivocal language. James de Vitry, a bishop in Palestine, before the middle of the thirteenth century, and Guido Guinizzelli, an Italian poet

11. The latter writer is of opinion that mulberries were not cultivated as an important object till after 1300, nor even to any great extent till after 1500; the Italian manufacturers buying most of their silk from Spain or the Levant.

* The history of Italian states, and especially Florence, will speak for the first country. Capmany attests the woollen manufacture of the second. Mem. Hist. de Barcel. t. i. part 3. p. 7. &c.; and Vaissette that of Carcassonne and its vicinity. Hist. de Lang. t. iv. p. 517.

† None were admitted to the rank of burgesses, in the towns of Aragon, who used any manual trade, with the exception of dealers in fine cloths. The woollen manufacture of Spain did not at any time become a considerable article of export, nor even supply the internal consumption, as Capmany has well shewn. Memorias Historicas, t. iii. p. 325. et seqq. and Edinburgh Review, vol. x.

of the same time, are equally explicit. The French, as well as Italians, claim the discovery as their own; but whether it were due to either of these nations, or rather learned from their intercourse with the Saracens, is not easily to be ascertained.* For some time, perhaps, even this wonderful improvement in the art of navigation might not be universally adopted by vessels sailing within the Mediterranean, and accustomed to

* Boucher, the French translator of Il Consolato del Mare, says, that Edrissi, a Saracen geographer who lived about 1100, gives an account, though in a confused manner, of the polarity of the magnet, t. ii. p. 280. However the lines of Guiot de Provins are decisive. These are quoted in Hist. Littéraire de la France, t. ix. p. 199., Mém. de l'Acad. des Inscript. t. xxi. p. 192. and several other works. Guinizzelli has the following passage, in a canzone quoted by Ginguené, Hist. Littéraire de l'Italie, t. i. p. 413.

In quelle parti sotto tramontana,
Sono li monti della calamita,
Che dan virtute all' aere
Di trarre il ferro; ma perchè lontana,
Vole di simil pietra aver aita,
A far la adoperare,
E diriżzar lo ago in ver la stella.

We cannot be diverted by the nonsensical theory these lines contain, from perceiving the positive testimony of the last verse to the poet's knowledge of the polarity of the magnet. But, if any doubt could remain, Tiraboschi, t. iv. p. 171. has fully established, from a series of passages, that this phænomenon was well known in the thirteenth century; and put an end altogether to the pretensions of Flavio Gioja, if such a person ever existed. See also Macpherson's Annals, p. 364. and 418. It is provoking to find an historian like Robertson asserting without hesitation, that this citizen of Amalfi was the inventor of the compass, and thus accrediting an error which had long before been detected.

It is a singular circumstance, and only to be explained by the obstinacy with which men are apt to reject improvement, that the magnetic needle was not generally adopted in navigation, till very long after the discovery of its properties; and even after their peculiar importance had been perceived. The writers of the thirteenth century, who mention the polarity of the needle, mention also its use in navigation; yet Capmany has found no distinct proof of its employment till 1403, and does not believe that it was frequently on board Mediterranean ships at the latter part of the preceding age. Memorias Historicas, t. iii. p. 70. Perhaps however he has inferred too much from his negative proof; and this subject seems open to further inquiry.

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their old system of observations. But when it became more established, it naturally inspired a more fearless spirit of adventure. It was not, as has been mentioned, till the beginning of the fourteenth century, that the Genoese and other nations around that inland sea steered into the Atlantic ocean towards England and Flanders. This intercourse with the northern countries enlivened their trade with the Levant by the exchange of productions which Spain and Italy do not supply, and enriched the merchants by means of whose capital the exports of London and of Alexandria were conveyed into each other's harbours.

Maritime laws.

The usual risks of navigation, and those incident to commercial adventure, produce a variety of questions in every system of jurisprudence, which though always to be determined, so far as possible, by principles of natural justice, must in many cases depend upon established customs. These customs of maritime law were anciently reduced into a code by the Rhodians, and the Roman emperors preserved or reformed the constitutions of that republic. It would be hard to say, how far the tradition of this early jurisprudence survived the decline of commerce in the darker ages; but after it began to recover itself, necessity suggested, or recollection prompted, a scheme of regulations resembling in some degree, but much more enlarged than those of antiquity. This was formed into a written code, Il Consolato del Mare, not much earlier, probably, than the middle of the

thirteenth century; and its promulgation seems rather to have proceeded from the citizens of Barcelona, than from those of Pisa or Venice, who have also claimed to be the first legislators of the sea.* Besides regulations simply mercantile, this system has defined the mutual rights of neutral and belligerent vessels, and thus laid the basis of the positive law of nations in its most important and disputed cases. The king of France and count of Provence solemnly acceded to this maritime code, which hence acquired a binding force within the Mediterranean sea; and in most respects, the law merchant of Europe is at present conformable to its provisions. A set of regulations, chiefly borrowed from the Consolato, was compiled in France under the reign of Louis IX., and prevailed in our own country. These have been denominated the laws of Oleron, from an idle story that they were enacted by Richard I., while his expedition to the Holy Land lay at

* Boucher supposes it to have been compiled at Barcelona about 900; but his reasonings are inconclusive, t. i. p. 72.; and indeed Barcelona at that time was little, if at all better than a fishing-town. Some argument might be drawn in favour of Pisa from the expressions of Henry IV.'s charter granted to that city in 1081. Consuetudines, quas habent de mari, sic iis observabimus sicut illorum est consuetudo. Muratori, Dissert. 45. Giannone seems to think the collection was compiled about the reign of Louis IX. l. xi. c. 6. Capmany, the last Spanish editor, whose authority ought perhaps to outweigh every other, asserts, and seems to proye, them to have been enacted by the mercantile magistrates of Barcelona, under the reign of James the Conqueror, which is much the same period. (Codigo de las Costumbres maritimas de Barcelona, Madrid, 1791.) But, by whatever nation they were reduced into their present form, these laws were certainly the ancient and established usages of the Mediterranean states; and Pisa may very probably have taken a great share in first practising what a century or two afterwards was rendered more precise at Barcelona.

anchor in that island.* Nor was the north without its peculiar code of maritime jurisprudence; namely, the ordinances of Wisbuy, a town in the isle of Gothland, principally compiled from those of Oleron, before the year 1400, by which the Baltic traders were governed.†

Frequency of piracy.

There was abundant reason for establishing among maritime nations some theory of mutual rights, and for securing the redress of injuries, as far as possible, by means of acknowledged tribunals. In that state of barbarous anarchy, which so long resisted the coercive authority of civil magistrates, the sea held out even more temptation and more impunity than the land; and when the laws had regained their sovereignty, and neither robbery nor private warfare was any longer tolerated, there remained that great common of mankind, unclaimed by any king, and the liberty of the sea was another name for the security of plunderers. A pirate, in a well-armed, quick-sailing vessel, must feel, I suppose, the enjoyments of his exemption from controul more exquisitely than any other free-booter; and darting along the bosom of the ocean, under the impartial radiance of the heavens, may deride the dark

* Macpherson, p. 358. Boucher supposes them to be registers of actual decisions.

† I have only the authority of Boucher for referring the Ordinances of Wisbuy to the year 1400. Beckman imagines them to be older than those of Oleron. But Wisbuy was not enclosed by a wall till 1288, a proof that it could not have been previously a town of much importance. It flourished chiefly in the first part of the fourteenth century, and was at that time an independent republic; but fell under the yoke of Denmark before the end of the same age.

concealments and hurried flights of the forest robber. His occupation is indeed extinguished by the civilization of later ages, or confined to distant climates. But in the thirteenth and fourteenth centuries, a rich vessel was never secure from attack; and neither restitution nor punishment of the criminals was to be obtained from governments, who sometimes feared the plunderer, and sometimes connived at the offence.* Mere piracy, however, was not the only danger. The maritime towns of Flanders, France and England, like the free republics of Italy, prosecuted their own quarrels by arms, without asking the leave of their respective sovereigns. This practice, exactly analogous to that of private war in the feudal system, more than once involved the kings of France and England in hostility.† But where the quarrel did not proceed to such a length as absolutely to engage two opposite towns, a modification of this ancient right of revenge formed part of the regular law of nations, under the name of reprisals. Whoever was plundered or injured by the inhabitant of another town obtained authority

Law of reprisals.

* Hugh Despenser seized a Genoese vessel valued at 14,300 marks, for which no restitution was ever made. Rym. iv. p. 701. Macpherson, A.D. 1336.

† The Cinque Ports and other trading towns of England were in a constant state of hostility with their opposite neighbours, during the reigns of Edward I. and II. One might quote almost half the instruments in Rymer, in proof of these conflicts, and of those with the mariners of Norway and Denmark. Sometimes mutual envy produced frays between different English towns. Thus in 1254, the Winchelsea mariners attacked a Yarmouth galley, and killed some of her men. Matt. Paris, apud Macpherson.

from his own magistrates to seize the property of any other person belonging to it, until his loss should be compensated. This law of reprisal was not confined to maritime places. It prevailed in Lombardy, and probably in the German cities. Thus if a citizen of Modena was robbed by a Bolognese, he complained to the magistrates of the former city, who represented the case to those of Bologna, demanding redress. If this were not immediately granted, letters of reprisals were issued, to plunder the territory of Bologna till the injured party should be reimbursed by sale of the spoil.* In the laws of Marseilles it is declared, "If a foreigner take any thing from a citizen of Marseilles, and he who has jurisdiction over the said debtor or unjust taker does not cause right to be done in the same, the rector or consuls, at the petition of the said citizen, shall grant him reprisals upon all the goods of the said debtor or unjust taker, and also upon the goods of others, who are under the jurisdiction of him who ought to do justice, and would not, to the said citizen of Marseilles."† Edward III. remonstrates, in an instrument published by Rymer, against letters of marque granted by the king of Aragon to one Berenger de la Tone who had been robbed by an English pirate of £2,000; alledging, that inasmuch as he had always been ready to give redress to the party, it seemed to his counsellors that

* Muratori, Dissert. 53. † Du Cange, voc. Laudum.

there was no just cause for reprisals upon the king's or his subject's property.* This passage is so far curious, as it asserts the existence of a customary law of nations, the knowledge of which was already a sort of learning. Sir E. Coke speaks of this right of private reprisals, as if it still existed; and it is certainly preserved in an unrepealed statute.†

Liability of aliens for each other's debts.

A practice founded on the same principles as reprisal, though rather less violent, was that of attaching the goods or persons of resident foreigners for the debts of their countrymen. This indeed, in England, was not confined to foreigners until the statute of Westminster I. c. 23. which enacts that "no stranger who is of this realm shall be distrained in any town or market for a debt wherein he is neither principal nor surety." Henry III. had previously granted a charter to the burgesses of Lubec, that they should not be arrested for the debt of any of their countrymen, unless the magistrates of Lubec neglected to compel payment.‡ But by a variety of grants from Edward II., the privileges of English subjects under the statute of Westminster were extended to most foreign nations.§ This unjust responsibility had not been

* Rymer, t. iv. p. 577. Videtur sapientibus et peritis, quod causa, de jure, non subfuit marcham seu reprisaliam in nostris; seu subditorum nostrorum, bonis concedendi. See too a case of neutral goods on board an enemy's vessel claimed by the owners, and a legal distinction taken in favour of the captors. t. vi. p. 14.

† 27 E. III. stat. ii. c. 17. 2 Inst. p. 205. See instances of letters of private reprisal granted by Henry IV., Rymer, t. viii. p. 96. 717. 773.

‡ Rymer, t. i. p. 839.

§ Idem, t. iii. p. 458. 647. 678. et infra. See too the ordinances of the staple, in 27 Edw. III., which confirm this among other

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confined to civil cases. One of a company of Italian merchants, the Spini, having killed a man, the officers of justice seized the bodies and effects of all the rest.*

Great profits of trade,

If under all these obstacles, whether created by barbarous manners, by national prejudice, or by the fraudulent and arbitrary measures of princes, the merchants of different countries became so opulent as almost to rival the ancient nobility, it must be ascribed to the greatness of their commercial profits. The trading companies possessed either a positive or a virtual monopoly, and held the keys of those eastern regions, for the luxuries of which the progressive refinement of manners produced an increasing demand. It is not easy to determine the average rate of profit;† but we know that the interest of money was exceedingly high throughout the middle ages. At Verona, in 1228, it was fixed by law at twelve and a half per cent.; at Modena, in 1270, it seems to have been as high as twenty.‡ The republic of Genoa towards the end of the fourteenth century, when Italy had grown wealthy, paid only from seven to ten per cent. to her creditors.§ But in France

and high rate of interest.

privileges, and contain manifold evidence of the regard paid to commerce in that reign.

* Rymer, t. ii. p. 891. Madox, Hist. Exchequer, c. xxii. s. 7.

† In the remarkable speech of the Doge Mocenigo, quoted in another place, vol. i. p. 487. the annual profit made by Venice on her mercantile capital is reckoned at forty per cent.

‡ Muratori, Dissert. 16.

§ Bizarri Hist. Genuens. p. 797. The rate of discount on bills, which may not have exactly corresponded to the average annual interest of money, was ten per cent. at Barcelona in 1435. Capmany, t. i. p. 209.

and England the rate was far more oppressive. An ordinance of Philip the Fair in 1311, allows twenty per cent. after the first year of the loan.* Under Henry III., according to Matthew Paris, the debtor paid ten per cent. every two months,† but this is absolutely incredible as a general practice. This was not merely owing to scarcity of money, but to the discouragement which a strange prejudice opposed to one of the most useful and legitimate branches of commerce. Usury, or lending money for profit, was treated as a crime by the theologians of the middle ages; and though the superstition has been eradicated, some part of the prejudice remains in our legislation. This trade in money, and indeed a great part of inland trade in general, had originally fallen to the Jews, who were noted for their usury so early as the sixth century.‡. For several subsequent ages they continued to employ their capital and industry to the same advantage, with little molestation from the clergy, who always tolerated their avowed and national infidelity, and often with some encouragement from princes. In the twelfth century we find them not only possessed of landed property in Languedoc, and cultivating the studies of medicine and Rabbinical literature in their own academy at Montpelier under the protection of the count of Toulouse, but invested with civil offices.§ Raymond Roger, viscount of Carcassonne, directs

Money dealings of the Jews.

* Du Cange, v. Usura.
† Muratori, Diss. 16.
‡ Greg. Turon. l. iv.
§ Hist. de Languedoc, t. ii. p. 517.; t. iii. p. 531.

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a writ "to his bailiffs Christian and Jewish."* It was one of the conditions imposed by the church on the count of Toulouse, that he should allow no Jews to possess magistracy in his dominions.† In Spain they were placed by some of the municipal laws on the footing of Christians, with respect to the composition for their lives, and seem in no other European country to have been so numerous or considerable.‡ The diligence and expertness of this people in all pecuniary dealings recommended them to princes who were solicitous about the improvement of their revenue. We find an article in the general charter of privileges granted by Peter III. of Aragon, in 1283, that no Jew should hold the office of bayle or judge. And two kings of Castile, Alonso XI. and Peter the Cruel, incurred much odium by employing Jewish ministers in their treasury. But, in other parts of Europe, their condition had, before that time, begun to change for the worse; partly from the fanatical spirit of the crusades, which prompted the populace to massacre, and partly from the jealousy which their opulence excited. Kings, in order to gain money and popularity at once, abolished the debts due to the children of Israel, except a part which they retained as the price of their bounty. One is at a loss to conceive the process of reasoning in an ordinance of St. Louis, where, "for the salvation of his own soul and

* id. t. iii. p. 121.
† id. p. 163.
‡ Marina, Ensayo Historico-Critico, p. 143.

those of his ancestors, he releases to all Christians a third part of what was owing by them to Jews."* Not content with such edicts, the kings of France sometimes banished the whole nation from their dominions, seizing their effects at the same time; and a season of alternate severity and toleration continued till, under Charles VI., they were finally expelled from the kingdom, where they never afterwards possessed any legal settlement.† In England they were not so harshly treated; but they became less remarkable for riches after the thirteenth century. This decline of the Jews was owing to the transference of their trade in money to other hands. In the early part of the thirteenth century the merchants of Lombardy and of the south of France‡ took up the business of remitting money by bills of exchange,§ and of making profit upon loans. The utility of this was found so great,

* Martenne, Thesaurus Anecdotorum, t. i. p. 984.

† Velly, t. iv. p. 136.

‡ The city of Cahors, in Quercy, the modern department of the Lot, produced a tribe of money-dealers. The Caursini are almost as often noticed as the Lombards. See the article in Du Cange. In Lombardy, Asti, a city of no great note in other respects, was famous for the same department of commerce.

§ There were three species of paper credit in the dealings of merchants: 1. General letters of credit, not directed to any one, which are not uncommon in the Levant: 2. Orders to pay money to a particular person: 3. Bills of exchange regularly negotiable. Boucher, t. ii. p. 621. Instances of the first are mentioned by Macpherson about 1200. p. 367. The second species was introduced by the Jews about 1183, (Capmany, t. i. p. 297.) but it may be doubtful whether the last stage of the progress was reached nearly so soon. An instrument in Rymer however of the year 1364, (t. vi. p. 495.) mentions literæ cambitoriæ, which seem to have been negotiable bills; and by 1400 they were drawn in sets, and worded exactly as at present. Macpher-

especially by the Italian clergy, who thus in an easy manner drew the income of their transalpine benefices, that in spite of much obloquy, the Lombard usurers established themselves in every country; and the general progress of commerce wore off the bigotry that had obstructed their reception. A distinction was made between moderate and exorbitant interest; and though the casuists did not acquiesce in this legal regulation, yet it satisfied, even in superstitious times, the consciences of provident traders.* The Italian bankers were frequently allowed to farm the customs in England, as a security, perhaps, for loans which were not very punctually repaid.† In 1345 the Bardi at

son, p. 614. and Beckman, Hist. of Inventions, vol. iii. p. 430. give from Capmany an actual precedent of a bill dated in 1404.

* Usury was looked upon with horror by our English divines after the Reformation, as we find in Strype's Life of Parker. Isaac Walton, if I remember right, tells us that Bishop Sanderson would not take interest for his money, but would give 100*l.* on condition of receiving 20*l.* for seven years, which he was pleased to consider a different thing. Fleury, in his Institutions au Droit Ecclésiastique, t. ii. p. 129. has shewn the subterfuges to which men had recourse in order to evade this prohibition. It is an unhappy truth, that great part of the attention devoted to the best of sciences, ethics and jurisprudence, has been employed to weaken principles that ought never to have been acknowledged.

One species of usury, and that of the highest importance to commerce, was always permitted, on account of the risk that attended it. This was marine insurance, which could not have existed, until money was considered, in itself, as a source of profit. The earliest regulations on the subject of insurance are those of Barcelona in 1433; but the practice was, of course, earlier than these, though not of great antiquity. It is not mentioned in the Consolato del Mare, nor in any of the Hanseatic laws of the fourteenth century. Beckman, vol. i. p. 388. This author, not being aware of the Barcelonese laws on this subject published by Capmany, supposes the first provisions regulating marine assurance to have been made at Florence in 1523.

† Macpherson, p. 437. et alibi. They had probably excellent bargains: in 1329 the Bardi farmed

Florence, the greatest company in Italy, became bankrupt, Edward III. owing them, in principal and interest, 900,000 gold florins. Another, the Peruzzi, failed at the same time, being creditors to Edward for 600,000 florins. The king of Sicily owed 100,000 florins to each of these bankers. Their failure involved, of course, a multitude of Florentine citizens, and was a heavy misfortune to the state.*

Banks of Genoa and others.

The earliest bank of deposit, instituted for the accommodation of private merchants, is said to have been that of Barcelona, in 1401.† The banks of Venice and Genoa were of a different description. Although the former of these two has the advantage of greater antiquity, having been formed, as we are told, in the twelfth century, yet its early history is not so clear as that of Genoa, nor its political importance so remarkable, however similar might be its origin.‡ During the wars of Genoa in the fourteenth century, she had borrowed large sums of private citizens, to whom the revenues were pledged for repayment. The republic of Florence had set a recent, though not a very encouraging, example of a public loan, to defray the expense of her war against Mastino della Scala, in 1336. The chief mercantile firms,

all the customs of England for 20*l.* a day. But, in 1282, the customs had produced 8411*l.*, and half a century of great improvement had elapsed.

* Villani, l. xii. c. 55. 87. He calls these two banking-houses the pillars which sustained great part of the commerce of Christendom.

† Capmany, t. i. p. 213.

‡ Macpherson, p. 341. from Sanuto. The bank of Venice is referred to 1171.

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as well as individual citizens, furnished money on an assignment of the taxes, receiving fifteen per cent. interest; which appears to have been above the rate of private usury.* The state was not unreasonably considered a worse debtor than some of her citizens; for in a few years these loans were consolidated into a general fund, or *monte*, with some deduction from the capital, and a great diminution of interest; so that an original debt of one hundred florins sold only for twenty-five.† But I have not found that these creditors formed at Florence a corporate body, or took any part, as such, in the affairs of the republic. The case was different at Genoa. As a security at least for their interest, the subscribers to public loans were permitted to receive the produce of the taxes by their own collectors, paying the excess into the treasury. The number and distinct classes of these subscribers becoming at length inconvenient, they were formed, about the year 1407, into a single corporation, called the bank of St. George, which was from that time the sole national creditor and mortgagee. The government of this was entrusted to eight protectors. It soon became almost independent of the state. Every senator, on his admission, swore to maintain the privileges of the bank, which were confirmed by the pope, and even by the emperor. The bank interposed its advice in every measure of govern-

* G. Villani, l. xi. c. 49.

† Matt. Villani, p. 227. (in Muratori, Script. Rom. Ital. t. xiv.)

ment, and generally, as is admitted, to the public advantage. It equipped armaments at its own expense, one of which subdued the island of Corsica; and this acquisition, like those of our great Indian corporation, was long subject to a company of merchants, without any interference of the mother country.*

Increase of domestic expenditure.

The increasing wealth of Europe, whether derived from internal improvement, or foreign commerce, displayed itself in more expensive consumption, and greater refinements of domestic life. But these effects were for a long time very gradual, each generation making a few steps in the progress, which are hardly discernible except by an attentive inquirer. It is not till the latter half of the thirteenth century, that an accelerated impulse appears to be given to society. The just government and suppression of disorder under St. Louis, and the peaceful temper of his brother Alfonso, count of Toulouse and Poitou, gave France leisure to avail herself of her admirable fertility. England, that to a soil not perhaps inferior to that of France, united the inestimable advantage of an insular position, and was invigorated, above all, by her free constitution, and the steady industriousness of her people, rose with a pretty uniform motion from the time of Edward I. Italy, though the better days of freedom had passed away in most of her republics, made a rapid transition from simplicity to refinement.

* Bizarri Hist. Genuens. p. 797. (Antwerp, 1579.) Machiavelli, Storia Fiorentina, l. viii.

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"In those times," says a writer about the year 1300, speaking of the age of Frederic II., "the manners of the Italians were rude. A man and his wife ate off the same plate. There were no wooden handled knives, nor more than one or two drinking cups, in a house. Candles of wax or tallow were unknown; a servant held a torch during supper. The clothes of men were of leather unlined: scarcely any gold or silver was seen on their dress. The common people ate flesh but three times a week, and kept their cold meat for supper. Many did not drink wine in summer. A small stock of corn seemed riches. The portions of women were small; their dress, even after marriage, was simple. The pride of men was to be well provided with arms and horses; that of the nobility to have lofty towers, of which all the cities in Italy were full. But now frugality has been changed for sumptuousness; every thing exquisite is sought after in dress; gold, silver, pearls, silks, and rich furs. Foreign wines and rich meats are required. Hence usury, rapine, fraud, tyranny,* &c." This passage is supported by other testimonies nearly of the same

* Ricobaldus Ferrarensis, apud Murat. Dissert. 23. Francisc. Pippinus, ibidem. Muratori endeavours to extenuate the authority of this passage, on account of some more ancient writers who complain of the luxury of their times, and of some particular instances of magnificence and expense. But Ricobaldi alludes, as Muratori himself admits, to the mode of living in the middle ranks, and not to that of courts, which in all ages might occasionally display considerable splendour. I see nothing to weaken so explicit a testimony of a contemporary, which in fact is confirmed by many writers of the next age, who, according to the practice of Italian chroniclers, have copied it as their own.

time. The conquest of Naples by Charles of Anjou, in 1266, seems to have been the epoch of increasing luxury throughout Italy. His Provençal knights, with their plumed helmets and golden collars, the chariot of his queen covered with blue velvet, and sprinkled with lilies of gold, astonished the citizens of Naples.* Provence had enjoyed a long tranquillity, the natural source of luxurious magnificence; and Italy, now liberated from the yoke of the empire, soon reaped the same fruit of a condition more easy and peaceful than had been her lot for several ages. Dante speaks of the change of manners at Florence, from simplicity and virtue to refinement and dissoluteness, in terms very nearly similar to those quoted above,†

Throughout the fourteenth century, there continued to be a rapid but steady progression in England, of what we may denominate elegance, improvement, or luxury; and if this was for a time suspended in France, it must be ascribed to the unusual calamities which befell that country under Philip of Valois and his son. Just before

* Murat. Dissert. 23.

† Bellincion Berti vid' io andar cinto
Di cuojo e d'osso, e venir dallo specchio
La donna sua senza 'l viso dipinto.
E vidi quel di Nerli, e quel del Vecchio
Esser contenti alla pelle scoverta,
E sue donne al fuso ed al pennechio.
Paradiso, cant. xv.

See too the rest of this canto. But this is put in the mouth of Cacciaguida, the poet's ancestor, who lived in the former half of the twelfth century. The change, however, was probably subsequent to 1250, when the times of wealth and turbulence began at Florence.

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the breaking out of the English wars, an excessive fondness for dress is said to have distinguished not only the higher ranks, but the burghers, whose foolish emulation at least indicates their easy circumstances.* Modes of dress hardly perhaps deserve our notice on their own account; yet so far as their universal prevalence was a symptom of diffused wealth, we should not overlook either the invectives bestowed by the clergy on the fantastic extravagances of fashion, or the sumptuary laws by which it was endeavoured to restrain them.

Sumptuary laws.

The principle of sumptuary laws was partly derived from the small republics of antiquity, which might perhaps require that security for public spirit and equal rights; partly from the austere and injudicious theory of religion disseminated by the clergy. These prejudices united to render all increase of general comforts odious under the name of luxury; and a third motive more powerful than either, the jealousy with which the great regard any thing like imitation in those beneath them, co-operated to produce a sort of restrictive code in the laws of Europe. Some of these regulations are more ancient; but the chief part were enacted, both in France and England, during the fourteenth century; extending to

* Velly, t. viii. p. 352. The second continuator of Nangis vehemently inveighs against the long beards and short breeches of his age; after the introduction of which novelties, he judiciously observes the French were much more disposed to run away from their enemies than before. Spicilegium, t. iii. p. 105.

expenses of the table, as well as of apparel. The first statute of this description in our own country was, however, repealed the next year;* and subsequent provisions were entirely disregarded by a nation which valued liberty and commerce too much to obey laws conceived in a spirit hostile to both. Laws indeed designed by those governments to restrain the extravagance of their subjects may well justify the severe indignation which Adam Smith has poured upon all such interference with private expenditure. The kings of France and England were undoubtedly more egregious spendthrifts than any others in their dominions; and contributed far more by their love of pageantry to excite a taste for dissipation in their people, than by their ordinances to repress it.

Domestic manners of Italy.

Mussus, an historian of Placentia, has left a pretty copious account of the prevailing manners among his countrymen about 1388, and expressly contrasts their more luxurious living with the style of their ancestors seventy years before; when, as we have seen, they had already made considerable steps towards refinement. This passage is highly interesting; because it shews the regular tenor of domestic œconomy in an Italian city, rather than a mere display of individual magnificence, as in

* 37 E. III. Rep. 38 E. III. Several other statutes of a similar nature were passed in this and the ensuing reign. In France, there were sumptuary laws as old as Charlemagne, prohibiting or taxing the use of furs; but the first extensive regulation was under Philip the Fair. Velly, t. vii. p. 64.; t. xi. p. 190. These attempts to restrain what cannot be restrained continued even down to 1700. De la Mare, Traité de la Police, t. i. l. iii.

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most of the facts collected by our own and the French antiquaries. But it is much too long for insertion in this place.* No other country, perhaps, could exhibit so fair a picture of middle life: in France the burghers and even the inferior gentry were for the most part in a state of poverty at this period, which they concealed by an affectation of ornament; while our English yeomanry and tradesmen were more anxious to invigorate their bodies by a generous diet, than to dwell in well furnished houses, or to find comfort in cleanliness and elegance.† The German cities however had acquired with liberty the spirit of improvement and industry. From the time that Henry V. admitted their artisans to the privileges of free burghers, they became more and more prosperous;‡ while the steadiness and frugality of the German character compensated for some disadvantages arising out of their inland situation. Spire, Nuremberg, Ratisbon, and Augsburg, were not indeed like the rich markets of London and Bruges, nor could their burghers rival the princely merchants of Italy; but they enjoyed the blessings of competence diffused over a large class of industrious freemen, and, in the fifteenth century, one of the politest Italians could extol their splendid and well-furnished dwellings, their rich apparel,

* Muratori, Antichità Italiane, Dissert. 23. t. i. p. 325.

† These English, said the Spaniards who came over with Philip II., have their houses made of sticks and dirt, but they fare commonly so well as the king. Harrison's Description of Britain, prefixed to Holingshed, vol. i. p. 315. (edit. 1807.)

‡ Pfeffel, t. i. p. 293.

their easy and affluent mode of living, the security of their rights, and just equality of their laws.*

Civil architecture.

No chapter in the history of national manners would illustrate so well, if duly executed, the progress of social life, as that dedicated to domestic architecture. The fashions of dress and of amusements are generally capricious and irreducible to rule; but every change in the dwellings of mankind, from the rudest wooden cabin to the stately mansion, has been dictated by some principle of convenience, neatness, comfort or magnificence. Yet this most interesting field of research has been less

* Æneas Sylvius, de Moribus Germanorum. This treatise is an amplified panegyric upon Germany, and contains several curious passages. They must be taken, perhaps, with some allowance; for the drift of the whole is to persuade the Germans, that so rich and noble a country could afford a little money for the poor pope. Civitates quas vocant liberas, cum Imperatori solùm subjiciuntur, cujus jugum est instar libertatis; nec profectò usquam gentium tanta libertas est, quantâ fruuntur hujuscemodi civitates. Nam populi quos Itali vocant liberos, hi potissimùm serviunt, sive Venetias inspectes, sive Florentiam aut Cænas, in quibus cives præter paucos qui reliquos ducunt, loco mancipiorum habentur. Cum nec rebus suis uti, ut libet, vel fari quæ velint, et gravissimis opprimuntur pecuniarum exactionibus. Apud Germanos omnia læta sunt, omnia jucunda; nemo suis privatur bonis. Salva cuique sua hæreditas est, nulli nisi nocenti magistratus nocent. Nec apud eos factiones sicut apud Italas urbes grassantur. Sunt autem supra centum civitates hâc libertate fruentes. p. 1058.

In another part of his works, p. 719. he gives a specious account of Vienna. The houses, he says, had glass windows and iron doors. Fenestræ undique vitreæ perlucent, et ostia plerumque ferrea. In domibus multa et munda supellex. Altæ domus magnificæque visuntur. Unum id dedecori est, quod tecta plerumque tigno conteguntur, pauca latere. Cætera ædificia muro lapideo consistunt. Pictæ domus et exterius et interius splendent. Civitatis populus 50,000 *communicantium* creditur. I suppose this gives at least double for the total population. He proceeds to represent the manners of the city in a less favourable point of view, charging the citizens with gluttony and libertinism, the nobility with oppression, the judges with corruption, &c. Vienna probably had the vices of a flourishing city; but the love of amplification in so rhetorical a writer as Æneas Sylvius weakens the value of his testimony, on whichever side it is given.

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beaten by our antiquaries than others comparatively barren. I do not pretend to a complete knowledge of what has been written by these learned inquirers; but I can only name one book in which the civil architecture of our ancestors has been sketched, loosely indeed, but with a superior hand; and another, in which it is partially noticed. I mean by the first, a chapter in the Appendix to Dr. Whitaker's History of Whalley; and by the second, Mr. King's Essays on Ancient Castles in the Archæologia.* Of these I shall make free use in the following paragraphs.

The most ancient buildings which we can trace in this island, after the departure of the Romans, were circular towers of no great size, whereof many remain in Scotland; erected either on a natural eminence, or on an artificial mound of earth. Such are Conisborough Castle in Yorkshire, and Castleton in Derbyshire, built perhaps before the conquest.† To the lower chambers of those gloomy keeps there was no admission of light or air, except through long narrow loop-

* vols. iv. and vi.

† Mr. Lysons refers Castleton to the age of William the Conqueror, but without giving any reasons. Lysons's Derbyshire, p. ccxxxvi. Mr. King had satisfied himself that it was built during the Heptarchy, and even before the conversion of the Saxons to Christianity; but in this he gave the reins, as usual, to his imagination, which as much exceeded his learning, as the latter did his judgement. Conisborough should seem, by the name, to have been a royal residence, which it certainly never was after the conquest. But if the engravings of the decorative parts in Archæologia, vol. vi. p. 244. are not remarkably inaccurate, the architecture is too elegant for the Danes, much more for the unconverted Saxons. Both these castles are inclosed by a court, or ballium, with a fortified entrance, like those erected by the Normans.

holes, and an aperture in the roof. Regular windows were made in the upper apartments. Were it not for the vast thickness of the walls, and some marks of attention both to convenience and decoration in these structures, we might be induced to consider them as rather intended for security during the transient inroad of an enemy, than for a chieftain's usual residence. They bear a close resemblance, except by their circular form, and more insulated situation, to the peels, or square towers of three or four stories, which are still found contiguous to ancient mansion-houses, themselves far more ancient, in the northern counties,* and seem to have been designed for places of refuge.

In course of time, the barons, who owned these castles, began to covet a more comfortable dwelling. The keep was either much enlarged, or altogether relinquished as a place of residence, except in time of siege; while more convenient apartments were sometimes erected in the tower of entrance, over the great gate-way, which led to the inner ballium or court-yard. Thus at Tunbridge Castle, this part of which is referred by Mr. King to the beginning of the thirteenth century, there was a room, twenty-eight feet by sixteen, on each side of the gate-way; another above, of the same dimensions, with an intermediate room over the entrance; and one large apartment on a second floor occupying the whole

* Whitaker's Hist. of Whalley. Lysons's Cumberland, p. ccvi.

space, and intended for state. The windows in this class of castles were still little better than loop-holes on the basement story, but in the upper rooms often large and beautifully ornamented, though always looking inwards to the court. Edward I. introduced a more splendid and convenient style of castles, containing many habitable towers, with communicating apartments. Conway and Carnarvon will be familiar examples. The next innovation was the castle-palace; of which Windsor, if not quite the earliest, is the most magnificent instance. Alnwick, Naworth, Harewood, Spofforth, Kenilworth, and Warwick, were all built upon this scheme during the fourteenth century, but subsequent enlargements have rendered caution necessary to distinguish their original remains. "The odd mixture," says Mr. King, "of convenience and magnificence with cautious designs for protection and defence, and with the inconveniences of the former confined plan of a close fortress, is very striking." The provisions for defence became now, however, little more than nugatory; large arched windows, like those of cathedrals, were introduced into halls, and this change in architecture manifestly bears witness to the cessation of baronial wars, and the increasing love of splendour in the reign of Edward III.

To these succeeded the castellated houses of the fifteenth century; such as Herstmonceux in Sussex, Haddon Hall in Derbyshire, and the older

part of Knowle in Kent.* They resembled fortified castles in their strong gate-ways, their turrets and battlements, to erect which a royal licence was necessary, but their defensive strength could only have availed against a sudden affray or attempt at forcible dispossession. They were always built round one or two court-yards, the circumference of the first, when there were two, being occupied by the offices and servants' rooms, that of the second by the state-apartments. Regular quadrangular houses, not castellated, were sometimes built during the same age, and under Henry VII. became universal in the superior style of domestic architecture.† The quadrangular form, as well from security and convenience, as from imitation of conventual houses, which were always constructed upon that model, was generally preferred; even where the dwelling-house, as indeed was usual, only took up one side of the enclosure, and the remaining three contained the offices, stables, and farm-buildings with walls of communication. Several very old parsonages appear to have been built in this manner.‡ It is, however, very difficult to discover any fragments of houses inhabited by the gentry, before the reign, at soonest, of Edward III., or even to trace them by engravings in the older topographical

* The ruins of Herstmonceux are, I believe, tolerably authentic remains of Henry VI.'s age, but a modern antiquary asserts that only one of the courts at Haddon Hall is of the fifteenth century. Lysons's Derbyshire.

† Archæologia, vol. vi.

‡ Blomefield's Norfolk, vol. iii. p. 242.

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works; not only from the dilapidations of time, but because very few considerable mansions had been erected by that class. A great part of England affords no stone fit for building; and the vast, though unfortunately not inexhaustible, resources of her oak forests were easily applied to less durable and magnificent structures. A frame of massive timber, independent of walls, and resembling the inverted hull of a large ship, formed the skelcton, as it were, of an ancient hall; the principal beams springing from the ground naturally curved, and forming a Gothic arch overhead. The intervals of these were filled up with horizontal planks; but in the earlier buildings, at least in some districts, no part of the walls was of stone.* Stone houses however are mentioned as belonging to citizens of London, even in the reign of Henry II.;† and, though not often perhaps regularly hewn stones, yet those scattered over the soil, or dug from flint quarries, bound together with a very strong and durable cement, were employed in the construction of manerial houses, especially in the western counties, and other parts where that material is easily procured.‡ Gradually even in timber buildings, the intervals of the main beams, which now became perpendicular, not throwing off their curved springers till they reached a considerable height, were occupied by

* Whitaker's Hist. of Whalley.

† Lyttleton, t. iv. p. 130.

‡ Harrison says, that few of the houses of the commonalty, except here and there in the west country towns, were made of stone, p. 314. This was about 1570.

stone walls, or, where stone was expensive, by mortar or plaster, intersected by horizontal or diagonal beams, grooved into the principal piers.* This mode of building continued for a long time, and is still familiar to our eyes in the older streets of the metropolis and other towns, and in many parts of the country.† Early in the fourteenth century, the art of building with brick, which had been lost since the Roman dominion, was introduced probably from Flanders. Though several edifices of that age are constructed with this material, it did not come into general use till the reign of Henry VI.‡ Many considerable houses as well as public buildings were erected with bricks during his reign and that of Edward IV., chiefly in the eastern countries, where the deficiency of stone was most experienced. Few, if any, brick mansion houses of the fifteenth century exist, except in a dilapidated state; but Queen's College and Clare Hall at Cambridge, and part of Eton College, are subsisting witnesses to the durability of the material as it was then employed.

Meanness of ordinary mansion-houses.

It is an error to suppose, that the English gentry were lodged in stately or even in well-sized houses. Generally speaking, their dwellings were

* Hist. of Whalley.

† The ancient manours and houses of our gentlemen, says Harrison, are yet, and for the most part of strong timber, in framing whereof our carpenters have been and are worthily preferred before those of like science among all other nations. Howbeit such as are lately builded are either of brick or hard stone, or both. p. 316.

‡ Archæologia, vol. i. p. 143.; vol. iv. p. 91.

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almost as inferior to those of their descendants in capacity, as they were in convenience. The usual arrangement consisted of an entrance-passage running through the house, with a hall on one side, a parlour beyond, and one or two chambers above, and on the opposite side, a kitchen, pantry and other offices.* Such was the ordinary manor-house of the fifteenth and sixteenth centuries, as appears not only from documents and engravings, but, as to the latter period from the buildings themselves, sometimes, though not very frequently, occupied by families of consideration, more often converted into farm-houses, or distinct tenements. Larger structures were erected by men of great estates during the reigns of Henry VI. and Edward IV.; but very few can be traced higher; and such has been the effect of time, still more through the advance or decline of families, and the progress of architectural improvement, than the natural decay of these buildings, that I should conceive it difficult to name a house in England, still inhabited by a gentleman, and not belonging to the order of castles, the principal apartments of which are older than the reign of

* Hist. of Whalley. In Strutt's View of Manners we have an inventory of furniture in the house of Mr. Richard Fermor, ancestor of the earl of Pomfret, at Easton in Northamptonshire, and in another in that of Sir Adrian Foskewe. Both these houses appear to have been of the dimensions and arrangement metioned. And even in houses of a more ample extent, the bisection of the ground-plot by an entrance passage was, I believe, universal, and is a proof of antiquity. Haddon Hall and Penshurst still display this ancient arrangement, which has been altered in some old houses. About the reign of James I., or perhaps a little sooner, architects began to perceive the additional grandeur of entering the great hall at once.

Henry VII. The instances at least must be extremely few.*

France by no means appears to have made a greater progress than our own country in domestic architecture. Except fortified castles, I do not find in the work of a very miscellaneous, but apparently diligent writer,† any considerable dwellings mentioned before the reign of Charles VII., and very few of so early a date.‡ Jacques Cœur, a famous merchant unjustly persecuted by that prince, had a handsome house at Paris, as well as another at Beaumont-sur-Oise.§ It is obvious that the long calamities which France endured

* Single rooms, windows, doorways, &c. of an earlier date may perhaps not unfrequently be found; but such instances are always to be verified by their intrinsic evidence, not by the tradition of the place. The most remarkable fragment of early building which I have any where found mentioned is at a house in Berkshire, called Appleton, where there exists a sort of prodigy, an entrance passage with circular arches in the Saxon style, which must probably be as old as the reign of Henry II. No other private house in England, as I conceive, can boast of such a monument of antiquity. Lysons's Berkshire, p. 212. 234.

† Mélanges tirés d'une grande bibliothèque, par M. de Paulmy, t. iii et xxxi. It is to be regretted that Le Grand d'Aussy never completed that part of his Vie privée des Français, which was to have comprehended the history of civil architecture. Villaret has slightly noticed its state about 1380. t. ii. p. 141.

‡ Chenonceaux in Touraine was built by a nephew of Chancellor Duprat; Gaillon in the department of Eure by Cardinal Amboise; both at the beginning of the sixteenth century. These are now considered, in their ruins, as among the most ancient houses in France. A rare work by Ducerceau, (Les plus excellens bâtimens de France, 1607.) gives accurate engravings of thirty houses; but with one or two exceptions, they seem all to have been built in the sixteenth century. Even in that age, defence was naturally an object in constructing a French mansion-house; and where defence is to be regarded, splendour and convenience must give way. The name of *château* was not retained without meaning.

§ Mélanges tirés, &c. t. iii. For the prosperity and downfall of Jacques Cœur see Villaret, t. xvi. p. 11.; but more especially Mém. de l'Acad. des Inscript. t. xx. p. 509.

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before the expulsion of the English must have retarded this eminent branch of national improvement.

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Even in Italy, where from the size of her cities, and social refinements of her inhabitants, greater elegance and splendour in building were justly to be expected, the domestic architecture of the middle ages did not attain any perfection. In several towns, the houses were covered with thatch, and suffered consequently from destructive fires. Costanzo, a Neapolitan historian near the end of the sixteenth century, remarks the change of manners that had occurred since the reign of Joanna II. one hundred and fifty years before. The great families under the queen expended all their wealth on their retainers, and placed their chief pride in bringing them into the field. They were ill lodged, not sumptuously clothed, not luxurious in their tables. The house of Caracciolo, high steward of that princess, one of the most powerful subjects that ever existed, having fallen into the hands of persons incomparably below his station, had been enlarged by them, as insufficient for their accommodation.* If such were the case in the city of Naples so late as the beginning of the fifteenth century, we may guess how mean were the habitations in less polished parts of Europe.

Invention of chimneys and glass windows.

The two most essential improvements in architecture during this period, one of which had been

* Giannone, Ist. di Napoli, t. iii. p. 280.

missed by the sagacity of Greece and Rome, were chimneys and glass-windows. Nothing apparently can be more simple than the former; yet the wisdom of ancient times had been content to let the smoke escape by an aperture in the centre of the roof; and a discovery, of which Vitruvius had not a glimpse, was made, perhaps in this country, by some forgotten semi-barbarian. About the middle of the fourteenth century, the use of chimneys is distinctly mentioned in England and in Italy; but they are found in several of our castles which bear a much older date.* This country seems to have lost very early the art of making glass, which was preserved in France, whence artificers were brought into England to furnish the windows of some new churches in the seventh century.† It is said that in the reign of

* Muratori, Antich. Ital. Dissert. 25. p. 390. Beckman, in his History of Inventions, vol. i. a work of very great research, cannot trace any explicit mention of chimneys beyond the writings of John Villani, wherein however they are not noticed as a new invention. Piers Plowman, a few years later than Villani, speaks of a "chambre with a chimney" in which rich men usually dined. But in the account-book of Bolton-Abbey, under the year 1311, there is a charge pro faciendo camino in the rectory-house of Gargrave. Whitaker's Hist. of Craven, p. 331. This may, I think, have been only an iron stove or fire-pan; though Dr. W. without hesitation translates it a chimney. However, Mr. King in his observations on ancient castles, Archæol. vol. vi. and Mr. Strutt, in his View of Manners, vol. i. describe chimneys in castles of a very old construction. That at Conisborough in Yorkshire is peculiarly worthy of attention, and carries back this important invention to a remote antiquity. Chimneys are still more modern in France; and seem, according to Paulmy, to have come into common use since the middle of the seventeenth century. Jadis nos pères n'avoient qu'un unique chauffoir, qui étoit commun à toute une famille, et quelquefois à plusieurs. t. iii. p. 133. In another place, however, he says; Il paraît que les tuyaux de cheminées étaient déjà très en usage en France. t. xxxi. p. 232.

† Du Cange, v. Vitreæ. Bentham's History of Ely, p. 22.

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Henry III., a few ecclesiastical buildings had glazed windows.* Suger, however, a century before, had adorned his great work, the abbey of St. Denis, with windows, not only glazed, but painted;† and I presume that other churches of the same class, both in France and England, especially after the lancet-shaped window had yielded to one of ampler dimensions, were generally decorated in a similar manner. Yet glass is said not to have been employed in the domestic architecture of France before the fourteenth century;‡ and its introduction into England was probably by no means earlier. Nor indeed did it come into general use during the period of the middle ages. Glazed windows were considered as moveable furniture, and probably bore a high price. When the earls of Northumberland, as late as the reign of Elizabeth, left Alnwick Castle, the windows were taken out of their frames, and carefully laid by.§

Furniture of houses.

But if the domestic buildings of the fifteenth century would not seem very spacious or convenient at present, far less would this luxurious generation be content with their internal accommodations. A gentleman's house containing three or four beds was extraordinarily well provided; few probably had more than two. The walls

* Matt. Paris. Vitæ Abbatum St. Alb. p. 122.

† Recueil des Hist. t. xii. p. 101.

‡ Paulmy, t. iii. p. 132. Villaret, t. xi. p. 141. Macpherson, p. 679.

§ Northumberland Household Book, preface, p. 16. Bishop Percy says, on the authority of Harrison, that glass was not commonly used in the reign of Henry VIII.

were commonly bare, without wainscot or even plaster; except that some great houses were furnished with hangings, and that perhaps hardly so soon as the reign of Edward IV. It is unnecessary to add, that neither libraries of books nor pictures could have found a place among furniture. Silver plate was very rare, and hardly used for the table. A few inventories of furniture that still remain exhibit a miserable deficiency.* And this was incomparably greater in private gentlemen's houses than among citizens, and especially foreign merchants. We have an inventory of the goods belonging to Contarini, a rich Venetian trader, at his house in St. Botolph's Lane, A. D. 1481. There appear to have been not less than ten beds, and glass windows are specially noticed as moveable furniture. No mention however is made of chairs or looking-glasses.† If we com-

* See some curious valuations of furniture and stock in trade at Colchester in 1296 and 1301. Eden's Introduct. to State of the Poor, p. 20 and 25., from the rolls of parliament. A carpenter's stock was valued at a shilling, and consisted of five tools. Other tradesmen were almost as poor; but a tanner's stock, if there is no mistake, was worth 9*l.* 7*s.* 10*d.* more than ten times any other. Tanners were principal tradesmen, the chief part of dress being made of leather. A few silver cups and spoons are the only articles of plate; and as the former are valued but at one or two shillings, they had, I suppose, but a little silver on the rim.

† Nicholls's Illustrations, p. 119. In this work, among several interesting facts of the same class, we have another inventory of the goods of "John Port, late the king's servant," who died about 1524; He seems to have been a man of some consideration and probably a merchant. The house consisted of a hall, parlour, buttery, and kitchen with two chambers, and one smaller, on the floor above; a napery, or linen room, and three garrets, besides a shop, which was probably detached. There were five bedsteads in the house, and on the whole a great deal of furniture for those times; much more than I have seen in any other inventory. His plate is valued at 94*l.*; his jewels at 23*l.*; his funeral expenses come to 73*l.* 6*s.* 8*d.* p. 119.

pare this account, however trifling in our estimation, with a similar inventory of furniture in Skipton castle, the great honour of the earls of Cumberland, and among the most splendid mansions of the north, not at the same period, for I have not found any inventory of a nobleman's furniture so ancient, but in 1572, after almost a century of continual improvement, we shall be astonished at the inferior provision of the baronial residence. There were not more than seven or eight beds in this great castle; nor had any of the chambers either chairs, glasses, or carpets.* It is in this sense, probably, that we must understand Æneas Sylvius, if he meant any thing more than to express a traveller's discontent, when he declares that the kings of Scotland would rejoice to be as well lodged as the second class of citizens at Nuremberg.† Few burghers of that town had

* Whitaker's Hist. of Craven, p. 289. A better notion of the accommodations usual in the rank immediately below may be collected from two inventories published by Strutt, one of Mr. Fermor's house at Easton, the other Sir Adrian Foskewe's. I have mentioned the size of these gentlemen's houses already. In the former, the parlour had wainscot, a table and a few chairs: the chambers above had two best beds, and there was one servant's bed; but the inferior servants had only mattresses on the floor. The best chambers had window shutters and curtains. Mr. Fermor, being a merchant, was probably better supplied than the neighbouring gentry. His plate however consisted of only sixteen spoons, and a few goblets and ale pots. Sir Adrian Foskewe's opulence appears to have been greater; he had a service of silver plate, and his parlour was furnished with hangings. This was in 1539; it is not to be imagined that a knight of the shire a hundred years before would have rivalled even this scanty provision of moveables. Strutt's View of Manners, vol. iii. p. 63. These details, trifling as they may appear, are absolutely necessary in order to give an idea with some precision of a state of national wealth so totally different from the present.

† Cuperent tam egregiè Scotorum reges quàm mediocres Nurem-

mansions, I presume, equal to the palaces of Dumferlin or Stirling, but it is not unlikely that they were better furnished.

Farm-houses and cottages.

In the construction of farm-houses and cottages, especially the latter, there have probably been fewer changes; and those it would be more difficult to follow. No building of this class can be supposed to exist of the antiquity to which the present work is confined; and I do not know that we have any document as to the inferior architecture of England, so valuable as one which M. de Paulmy has quoted for that of France, though perhaps more strictly applicable to Italy, an illuminated manuscript of the fourteenth century, being a translation of Crescentio's work on agriculture, illustrating the customs, and, among other things, the habitations of the agricultural class. According to Paulmy, there is no other difference between an ancient and a modern farm-house, than arises from the introduction of tiled roofs.* In the original work of Crescentio, a native of Bologna, who composed this treatise on rural affairs about the year 1300, an Italian farm-house, when built at least according to his plan, appears to have been commodious both in size and arrangement.† Cottages in England seem to have generally consisted of a single room without divi-

bergæ cives habitare. Æn. Sylv. apud Schmidt, Hist. des Allem. t. v. p. 510.

* t. iii. p. 127.

† Crescentius in Commodum Ruralium. (Lovaniæ, absque anno). This old edition contains many coarse wooden cuts, possibly taken from the illuminations which Paulmy found in his manuscript.

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sion of stories. Chimneys were unknown in such dwellings till the early part of Elizabeth's reign, when a very rapid and sensible improvement took place in the comforts of our yeomanry and cottagers.*

Ecclesiastical architecture.

It must be remembered, that I have introduced this disadvantageous representation of civil architecture, as a proof of general poverty and backwardness in the refinements of life. Considered in its higher departments, that art is the principal boast of the middle ages. The common buildings, especially those of a public kind, were constructed with skill and attention to durability. The castellated style displays these qualities in greater perfection; the means are well adapted to their objects, and its imposing grandeur, though chiefly resulting no doubt from massiveness and historical association, sometimes indicates a degree of architectural genius in the conception. But the most remarkable works of this art are the religious edifices erected in the twelfth and three following centuries. These structures, uniting sublimity in general composition with the beauties of variety and form, intricacy of parts, skilful or at least fortunate effects of shadow and light, and in some instances with extraordinary mechanical science, are naturally apt to lead those antiquaries who

* Harrison's account of England, prefixed to Hollingshed's Chronicles. Chimneys were not used in the farm-houses of Cheshire till within forty years of the publication of King's Vale-royal, (1656); the fire was in the midst of the house, against a hob of clay, and the oxen lived under the same roof. Whitaker's Craven, p. 334.

are most conversant with them into too partial estimates of the times wherein they were founded. They certainly are accustomed to behold the fairest side of the picture. It was the favourite and most honourable employment of ecclesiastical wealth, to erect, to enlarge, to repair, to decorate cathedral and conventual churches. An immense capital must have been expended upon these buildings in England between the conquest and the reformation. And it is pleasing to observe how the seeds of genius, hidden as it were under the frost of that dreary winter, began to bud to the first sunshine of encouragement. In the darkest period of the middle age, especially after the Scandinavian incursions into France and England, ecclesiastical architecture, though always far more advanced than any other art, bespoke the rudeness and poverty of the times. It began towards the latter part of the eleventh century, when tranquillity, at least from foreign enemies, was restored, and some degree of learning re-appeared, to assume a more noble appearance. The Anglo-Norman cathedrals were perhaps as much distinguished above other works of man in their own age, as the more splendid edifices of a later period. The science manifested in them is not however very great; and their style, though by no means destitute of lesser beauties, is upon the whole an awkward imitation of Roman architecture, or perhaps more immediately of the Saracenic buildings in Spain, and those of the lower

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Greek empire.* But about the middle of the twelfth century, this manner began to give place to what is improperly denominated the Gothic architecture;† of which the pointed arch, formed

* The Saracenic architecture was once conceived to have been the parent of the Gothic. But the pointed arch does not occur, I believe, in any Moorish buildings; while the great mosque of Cordova, built in the eighth century, resembles, except by its superior beauty and magnificence, one of our oldest cathedrals; the nave of Glocester, for example, or Durham. Even the vaulting is similar, and seems to indicate some imitation, though perhaps of a common model. Compare Archæologia, vol. xvii. plate 1. and 2. with Murphy's Arabian Antiquities, plate 5. The pillars indeed at Cordova are of the Corinthian order, perfectly executed, if we may trust the engraving, and the work, I presume, of Christian architects; while those of our Anglo-Norman cathedrals are generally an imitation of the Tuscan shaft, the builders not venturing to trust their roofs to a more slender support, though Corinthian foliage is common in the capitals, especially those of smaller ornamental columns. In fact, the Roman architecture is universally acknowledged to have produced what we call the Saxon or Norman; but it is remarkable that it should have been adopted, with no variation but that of the singular horse-shoe arch, by the Moors of Spain.

The Gothic, or pointed arch, though very uncommon in the genuine Saracenic of Spain and the Levant, may be found in some prints from Eastern buildings; and is particularly striking in the façade of the great mosque at Lucknow, in Salt's designs for Lord Valentia's Travels. The pointed-arch buildings in the Holy Land have all been traced to the age of the Crusades. Some arches, if they deserve the name, that have been referred to this class, are not pointed by their construction, but rendered such by cutting off and hollowing the projections of horizontal stones.

† Gibbon has asserted, what might justify this appellation, that "the image of Theodoric's palace at Verona still extant on a coin represents the oldest and most authentic model of Gothic architecture." vol. vii. p. 33. For this he refers to Maffei, Verona Illustrata, p. 31. where we find an engraving, not indeed of a coin, but of a seal; the building represented on which is in a totally dissimilar style. The following passage in Cassiodorus, for which I am indebted to M. Ginguené, Hist. Littér. de l'Italie, t. i. p. 55. would be more to the purpose; Quid dicamus columnarum junceam proceritatem? moles illas sublimissimas fabricarum quasi quibusdam erectis hastilibus contineri. These columns of reedy slenderness, so well described by juncea proceritas, are said to be found in the cathedral of Montreale in Sicily, built in the eighth century. Knight's Principles of Taste, p. 162. They are not however sufficient to justify the denomination of Gothic, which is usually confined to the pointed arch style.

by the segments of two intersecting semicircles, struck from points equidistant from the centre of a common diameter, has been deemed the essential characteristic. We are not concerned at present to inquire, whether this style originated in France or Germany, Italy or England, since it was certainly almost simultaneous in all these countries;* nor from what source it was derived; a question of no small difficulty. I would only venture to remark, that whatever may be thought of the origin of the pointed arch, for which there is more than one mode of accounting, we must perceive a very oriental character in the vast profusion of ornament; especially on the exterior sur-

* The famous abbot Suger, minister of Louis VI., rebuilt St. Denis about 1140. The cathedral of Laon is said to have been dedicated in 1114. Hist. Littéraire de la France, t. ix. p. 220. I do not know in what style the latter of these churches is built, but the former is, or rather was, Gothic. Notre Dame at Paris was begun soon after the middle of the twelfth century, and completed under St. Louis. Mélanges tirés d'une grande bibliothèque, t. xxxi. p. 108. In England, the earliest specimen I have seen of pointed arches is in a print of St. Botolph's Priory at Colchester, said by Strutt to have been built in 1110. View of Manners, vol. i. plate 30. These are apertures formed by excavating the space contained by the intersection of semi-circular, or Saxon arches; which are perpetually disposed, by way of ornament, on the outer as well as inner surface of old churches, so as to cut each other, and consequently to produce the same figure of a Gothic arch, which the diagram of the first proposition in Euclid presents; and, if there is no mistake in the date, they are probably among the most ancient of that style in Europe. Those at the church of St. Cross near Winchester are of the reign of Stephen; and generally speaking, the pointed style, especially in vaulting, the most important object in the construction of a building, is not considered as older than Henry II. The nave of Canterbury cathedral, of the erection of which by a French architect about 1176 we have a full account in Gervase, (Twysden, Decem Scriptores, col. 1289.,) and the Temple church, dedicated in 1183, are the most ancient English buildings altogether in the Gothic manner.

face, which is as distinguishing a mark of Gothic buildings as their arches, and contributes in an eminent degree both to their beauties and their defects. This indeed is rather applicable to the later than the earlier stage of architecture, and rather to continental than English churches. Amiens is in a far more florid style than Salisbury, though a contemporary structure. The Gothic species of architecture is thought by some to have reached its perfection, considered as an object of taste, by the middle of the fourteenth century, or at least to have lost something of its excellence by the corresponding part of the next age; an effect of its early and rapid cultivation, since arts appear to have, like individuals, their natural progress and decay. Yet this seems, if true at all, only applicable to England; since the cathedrals of Cologne and Milan, probably the most distinguished monuments of this architecture, are both of the fifteenth century. The mechanical execution, at least, continued to improve, and is so far beyond the apparent intellectual powers of those times, that some have ascribed the principal ecclesiastical structures to the fraternity of freemasons, depositaries of a concealed and traditionary science. There is probably some ground for this opinion; and the earlier archives of that mysterious association, if they existed, might illustrate the progress of Gothic architecture and perhaps reveal its origin. The remarkable change into this new style, that was almost contempo-

raneous in every part of Europe, cannot be explained by any local circumstances, or the capricious taste of a single nation.*

Agriculture in some degree progressive.

It would be a pleasing task to trace with satisfactory exactness the slow, and almost perhaps insensible progress of agriculture and internal improvement during the latter period of the middle ages. But no diligence could recover the unrecorded history of a single village; though considerable attention has of late been paid to this interesting subject by those antiquaries, who, though sometimes affecting to despise the lights of modern philosophy, are unconsciously guided by their effulgence. I have already adverted to the wretched condition of agriculture during the prevalence of feudal tenures, as well as before their general establishment.† Yet even in the least civi-

* The curious subject of freemasonry has unfortunately been treated only by panegyrists or calumniators, both equally mendacious. I do not wish to pry into the mysteries of the craft; but it would be interesting to know more of their history during the period when they were literally architects. They are charged by an act of parliament, 3 H. VI. c. 1. with fixing the price of their labour in their annual chapters, contrary to the statute of labourers, and such chapters are consequently prohibited. This is their first persecution; they have since undergone others, and are perhaps reserved for still more. It is remarkable, that masons were never legally incorporated, like other traders; their bond of union being stronger than any charter. The article Masonry in the Encyclopædia Britannica is worth reading.

† I cannot resist the pleasure of transcribing a lively and eloquent passage from Dr. Whitaker. "Could a curious observer of the present day carry himself nine or ten centuries back, and ranging the summit of Pendle survey the forked vale of Calder on one side, and the bolder margins of Ribble and Hadder on the other, instead of populous towns and villages, the castle, the old tower-built house, the elegant modern mansion, the artificial plantation, the enclosed park and pleasure-ground, instead of uninterrupted inclosures which have driven sterility almost to the summit of the fells, how great must then have been the contrast, when, ranging either at a distance, or immediately beneath, his eye must

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lized ages, there were not wanting partial encouragements to cultivation, and the ameliorating principle of human industry struggled against destructive revolutions and barbarous disorder. The devastation of war from the fifth to the eleventh century rendered land the least costly of all gifts, though it must ever be the most truly valuable and permanent. Many of the grants to monasteries, which strike us as enormous, were of districts absolutely wasted, which would probably have been reclaimed by no other means. We owe the agricultural restoration of great part of Europe to the monks. They chose, for the sake of retirement, secluded regions which they cultivated with the labour of their hands.* Several charters are extant, granted to convents, and sometimes to laymen, of lands which they had recovered from a

have caught vast tracts of forest ground stagnating with bog or darkened by native woods, where the wild ox, the roe, the stag, and the wolf, had scarcely learned the supremacy of man, when, directing his view to the intermediate spaces, to the windings of the vallies, or the expanse of plain beneath, he could only have distinguished a few insulated patches of culture, each encircling a village of wretched cabbins, among which would still be remarked one rude mansion of wood, scarcely equal in comfort to a modern cottage, yet then rising proudly eminent above the rest, where the Saxon lord, surrounded by his faithful cotarii, enjoyed a rude and solitary independence, owning no superior but his sovereign." Hist. of Whalley, p. 133. About a fourteenth part of this parish of Whalley was cultivated at the time of Domesday. This proportion however would by no means hold in the counties south of Trent.

* "Of the Anglo-Saxon husbandry we may remark," says Mr. Turner, "that Domesday Survey gives us some indication that the cultivation of the church lands was much superior to that of any other order of society: They have much less wood upon them, and less common of pasture; and what they had appears often in smaller and more irregular pieces; while their meadow was more abundant, and in more numerous distributions." Hist. of Anglo-Saxons, vol. ii. p. 167.

desert condition, after the ravages of the Saracens.* Some districts were allotted to a body of Spanish colonists, who emigrated, in the reign of Louis the Debonair, in search of a Christian sovereign.† Nor is this the only instance of agricultural colonies. Charlemagne transplanted part of his conquered Saxons into Flanders, a country at that time almost unpeopled; and at a much later period, there was a remarkable reflux from the same country, or rather from Holland, to the coasts of the Baltic sea. In the twelfth century, great numbers of Dutch colonists settled along the whole line between the Ems and the Vistula. They obtained grants of uncultivated land on condition of fixed rents, and were governed by their own laws under magistrates of their election.‡

There cannot be a more striking proof of the

* Thus, in Marca Hispanica, Appendix, p. 770. we have a grant from Lothaire I. in 834. to a person and his brother of lands which their father, ab eremo in Septimaniâ trahens, had possessed by a charter of Charlemagne. See too p. 773. and other places. Du Cange, v. Eremus, gives also a few instances.

† Du Cange, v. Aprisio Baluze, Capitularia, t. i. p. 549. They were permitted to decide petty suits among themselves, but for more important matters were to repair to the county-court. A liberal policy runs through the whole charter. See more on the same subject, id. p. 569.

‡ I owe this fact to M. Heeren, Essai sur l'Influence des Croisades, p. 266. An inundation in their own country is supposed to have immediately produced this emigration; but it was probably successive, and connected with political as well as physical causes of greater permanence. The first instrument in which they are mentioned is a grant from the bishop of Hamburgh in 1106. This colony has affected the local usages, as well as the denominations of things and places along the northern coast of Germany. It must be presumed that a large proportion of the emigrants were diverted from agriculture to people the commercial cities which grew up in the twelfth century upon that coast.

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low condition of English agriculture in the eleventh century, than is exhibited by Domesday book. Though almost all England had been partially cultivated, and we find nearly the same manors, except in the north, which exist at present, yet the value and extent of cultivated ground are inconceivably small. With every allowance for the inaccuracies and partialities of those by whom that famous survey was completed,* we are lost in amazement at the constant recurrence of two or three carucates in demesne, with folklands occupied by ten or a dozen villeins, valued all together at forty shillings, as the return of a manor, which now would yield a competent income to a gentleman. If Domesday book can be considered as even approaching to accuracy in respect of these estimates, agriculture must certainly have made a very material progress in the four succeeding centuries. This however is rendered probable by other documents. Ingulfus, abbot of Croyland under the conqueror, supplies an early and interesting evidence of improvement. Richard de Rules, lord of Deeping, he tells us, being fond of

* Ingulfus tells us that the commissioners were pious enough to favour Croyland, returning its possessions inaccurately, both as to measurement and value; non ad verum pretium, nec ad verum spatium nostrum monasterium librabant misericorditer, præcaventes in futurum regis exactionibus. p. 79. I may just observe by the way, that Ingulfus gives the plain meaning of the word Domesday, which has been disputed. The book was so called, he says, pro suâ generalitate omnia tenementa totius terræ integrè continente; that is, it was as general and conclusive as the last judgement will be.

agriculture, obtained permission from the abbey to inclose a large portion of marsh for the purpose of separate pasture, excluding the Welland by a strong dike, upon which he erected a town, and rendering those stagnant fens a garden of Eden.* In imitation of this spirited cultivator, the inhabitants of Spalding and some neighbouring villages, by a common resolution divided their marshes amongst them; when some converting them to tillage, some reserving them for meadow, others leaving them in pasture, found a rich soil for every purpose. The abbey of Croyland and villages in that neighbourhood followed this example.† This early instance of parochial inclosure is not to be overlooked in the history of social progress. By the statute of Merton, in the 20th of Henry III. the lord is permitted to approve, that is to inclose, the waste lands of his manor, provided he leave sufficient common of pasture for the freeholders. Higden, a writer who lived about the time of Richard II., says, in reference to the number of hydes and vills of England at the conquest, that by clearing of woods, and ploughing up wastes, there were many more of each in his age than formerly.‡ And it might be easily presumed, independently of proof, that woods were cleared, marshes drained, and wastes brought into tillage,

* 1 Gale xv. Script. p. 77.

† Communi plebiscito viritim inter se diviserunt, et quidam suas portiones agricolantes, quidam ad fœnum conservantes, quidam ut prius ad pasturam suorum animalium separaliter jacere permittentes, terram pinguem et uberem repererunt. p. 94.

‡ 1 Gale xv Script. p. 201.

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during the long period that the house of Plantagenet sat on the throne. From manerial surveys indeed and similar instruments, it appears that in some places there was nearly as much ground cultivated in the reign of Edward III. as at the present day. The condition of different counties however was very far from being alike, and in general, the northern and western parts of England were the most backward.*

The culture of arable land was very imperfect. Fleta remarks, in the reign of Edward I. or II., that unless an acre yielded more than six bushels of corn, the farmer would be a loser and the land yield no rent.† And Sir John Cullum, from very minute accounts, has calculated that nine or ten bushels were a full average crop on an acre of wheat. An amazing excess of tillage accompanied, and partly, I suppose, produced this imperfect cultivation. In Hawsted for example, under Edward I., there were thirteen or fourteen hundred acres of arable, and only forty-five of meadow ground. A similar disproportion occurs almost invariably in every account we possess.‡ This seems inconsistent with the low price of cattle. But we must recollect, that the common pasture, often the most extensive part of a manor,

* A good deal of information upon the former state of agriculture will be found in Cullum's History of Hawsted. Blomefield's Norfolk is in this respect among the most valuable of our local histories. Sir Frederic Eden, in the first part of his excellent work on the poor, has collected several interesting facts.

† l. ii. c. 8.

‡ Cullum, p. 100. 220. Eden's State of Poor, &c. p. 48. Whitaker's Craven, p. 45. 336.

is not included, at least by any specific measurement, in these surveys. The rent of land differed of course materially; sixpence an acre seems to have been about the average for arable land in the thirteenth century,* though meadow was at double or treble that sum. But the landlords were naturally solicitous to augment a revenue that became more and more inadequate to their luxuries. They grew attentive to agricultural concerns, and perceived that a high rate of produce, against which their less enlightened ancestors had been used to clamour, would bring much more into their coffers than it took away. The exportation of corn had been absolutely prohibited. But the statute of the 15th Henry VI. c. 2. reciting that "on this account farmers, and others who use husbandry, cannot sell their corn but at a low price, to the great damage of the realm," permits it to be sent any where but to the king's enemies, so long as the quarter of wheat shall not exceed 6*s.* 8*d.* in value, or that of barley 3*s.* The price of wool was fixed in the thirty-second year of the same reign at a minimum, below which no person was suffered to buy it, though he might give more;† a provision neither wise nor equitable, but obviously suggested by the same motive. Whether the rents of land were augmented in any degree through these measures, I have not perceived; their great rise took place

* I infer this from a number of passages in Blomefield, Cullum, and other writers. Hearne says that an acre was often called solidata terræ; because the yearly rent of one *on the best land* was a shilling. Lib. Nig. Scacc. p. 31.

† Rot. Parl. vol. v. p. 275.

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in the reign of Henry VIII., or rather afterwards.* The usual price of land under Edward IV. seems to have been ten years purchase.†

Its condition in France and Italy.

It may easily be presumed that an English writer can furnish very little information as to the state of agriculture in foreign countries. In such works relating to France as have fallen within my reach, I have found nothing satisfactory, and cannot pretend to determine, whether the natural tendency of mankind to ameliorate their condition had a greater influence in promoting agriculture, or the vices inherent in the actual order of society, and those public misfortunes to which that kingdom was exposed, in retarding it.‡ The state of Italy was far different; the rich Lombard plains, still more fertilized by irrigation, became a garden, and agriculture seems to have reached the excellence which it still retains. The constant warfare indeed of neighbouring cities is not very favourable to industry; and upon this account we might incline to place the greatest territorial improvement of Lombardy at an æra rather posterior to that of her republican government; but from this it primarily sprung; and without the subjugation of the feudal aristocracy, and that perpetual demand upon the

* A passage in Bishop Latimer's sermons, too often quoted to require repetition, shews that land was much underlet about the end of the fifteenth century. His father, he says, kept half a dozen husbandmen, and milked thirty cows, on a farm of three or four pounds a year. It is not surprizing that he lived as plentifully as his son describes.

† Rymer, t. xii. p. 204.

‡ Velly and Villaret scarcely mention the subject; and Le Grand merely tells us that it was entirely neglected; but the details of such an art even in its state of neglect might be interesting.

fertility of the earth which an increasing population of citizens produced, the valley of the Po would not have yielded more to human labour than it had done for several preceding centuries.* Though Lombardy was extremely populous in the thirteenth and fourteenth centuries, she exported large quantities of corn.† The very curious treatise of Crescentius exhibits the full details of Italian husbandry about 1300, and might afford an interesting comparison to those who are acquainted with its present state. That state indeed in many parts of Italy displays no symptoms of decline. But whatever mysterious influence of soil or climate has scattered the seeds of death on the western regions of Tuscany had not manifested itself in the middle ages. Among uninhabited plains, the traveller is struck by the ruins of innumerable castles and villages, monuments of a time when pestilence was either unfelt, or had at least not forbad the residence of mankind.‡ Volterra, whose deserted walls look down upon that tainted solitude, was once a small, but free republic; Siena, round whom, though less depopulated, the malignant influence hovers, was once almost the rival of Florence. So melancholy and apparently irresistible a decline of culture and population through physical causes, as seems to have gradually overspread a large portion of Italy, has not perhaps

* Muratori, Dissert. 21.
† Denina, l. xi. c. 7.
‡ Denina, ibid. Chateauvieux, Lettres sur l'Italie, t. i.

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Gardening.

been experienced in any other part of Europe, unless we except Iceland.

The Italians of the fourteenth century seem to have paid some attention to an art, of which, both as related to cultivation and to architecture, our own forefathers were almost entirely ignorant. Crescentius dilates upon horticulture, and gives a pretty long list of herbs both esculent and medicinal.* His notions about the ornamental department are rather beyond what we should expect, and I do not know that his scheme of a flower-garden could be much amended. His general arrangements, which are minutely detailed with evident fondness for the subject, would of course appear too formal at present; yet less so than those of subsequent times; and though acquainted with what is called the topiary art, that of training or cutting trees into regular figures, he does not seem to run into its extravagance. Regular gardens, according to Paulmy, were not made in France till the sixteenth or even seventeenth century;† yet one is said to have existed at the Louvre, of much older construction.‡ England, I believe, had nothing of the ornamental kind, unless it were some trees regularly disposed in the orchard of a monastery. Even the common horticultural art for culinary purposes, though not entirely neglected, since the produce of gardens is sometimes mentioned in ancient deeds, had not been cultivated with much

* l. vi.

† t. iii. p. 145.; t. xxxi. p. 258.

‡ De la Mare, Traité de la Police, t. iii. p. 380.

attention.* The esculent vegetables now most in use were introduced in the reign of Elizabeth, and some sorts a great deal later.

Changes in value of money.

I should leave this slight survey of œconomical history still more imperfect, were I to make no observation on the relative values of money. Without something like precision in our notions upon this subject, every statistical inquiry becomes a source of confusion and error. But considerable difficulties attend the discussion. These arise principally from two causes; the inaccuracy or partial representations of historical writers, on whom we are accustomed too implicitly to rely, and the change of manners, which renders a certain command over articles of purchase less adequate to our wants than it was in former ages.

The first of these difficulties is capable of being removed by a circumspect use of authorities. When this part of statistical history began to excite attention, which was hardly perhaps before the publication of Bishop Fleetwood's Chronicon Preciosum, so few authentic documents had been published with respect to prices, that enquirers were glad to have recourse to historians, even when not contemporary, for such facts as they had thought fit to record. But these historians were sometimes too distant from the times concerning which they wrote, and too careless in their general character, to merit much regard; and even when contemporary, were often credulous, remote from

* Eden's State of Poor, vol. i. p. 51.

the concerns of the world, and, at the best, more apt to register some extraordinary phænomenon of scarcity or cheapness, than the average rate of pecuniary dealings. The one ought, in my opinion, to be absolutely rejected as testimonies, the other to be sparingly and diffidently admitted.* For it is no longer necessary to lean upon such uncertain witnesses. During the last century a very laudable industry has been shewn by antiquaries in the publication of account-books belonging to private persons, registers of expenses in convents, returns of markets, valuations of goods, tavern-bills, and in short every document, however trifling in itself, by which this important subject can be illustrated. A sufficient number of such authorities, proving the ordinary tenor of prices, rather than any remarkable deviations from it, are the true

* Sir F. Eden, whose table of prices, though capable of some improvement, is perhaps the best that has appeared, would, I think, have acted better, by omitting all references to mere historians, and relying entirely on regular documents. I do not however include local histories, such as the Annals of Dunstaple, when they record the market-prices of their neighbourhood, in respect of which the book last-mentioned is almost in the nature of a register. Dr. Whitaker remarks the inexactness of Stowe, who says that wheat sold in London, A. D. 1514, at 20*s.* a quarter; whereas it appears to have been at 9*s.* in Lancashire, where it was always dearer than in the metropolis. Hist. of Whalley, p. 97. It is an odd mistake, into which Sir F. Eden has fallen, when he asserts and argues on the supposition, that the price of wheat fluctuated, in the thirteenth century, from 1*s.* to 6*l.* 8*s.* a quarter. vol. i. p. 18. Certainly, if any chronicler had mentioned such a price as the latter, equivalent to 150*l.* at present, we should either suppose that his text was corrupt, or reject it as an absurd exaggeration. But, in fact, the author has, through haste, mistaken 6*s.* 8*d.* for 6*l.* 8*s.*, as will appear by referring to his own table of prices, where it is set down rightly. It is observed by Mr. Macpherson, a very competent judge, that the arithmetical statements of the best historians of the middle ages are seldom correct, owing partly to their neglect of examination, and partly to blunders of transcribers. Annals of Commerce, vol. i. p. 423.

basis of a table, by which all changes in the value of money should be measured. I have little doubt, but that such a table might be constructed from the data we possess with tolerable exactness, sufficient at least to supersede one often quoted by political œconomists, but which appears to be founded upon very superficial and erroneous enquiries.*

It is by no means required that I should here offer such a table of values, which, as to every country except England, I have no means of constructing, and which, even as to England, would be subject to many difficulties. But a reader, unaccustomed to these investigations, ought to have some assistance in comparing the prices of ancient times with those of his own. I will therefore, without attempting to ascend very high, for we have really no sufficient data as to the period immediately subsequent to the conquest, much less that which preceded, endeavour at a sort of approximation for the thirteenth and fifteenth centuries. In the reigns of Henry III. and Edward I. previously to the first debasement of the coin by the latter in 1301, the ordinary price of a quarter of wheat appears to have been about four shillings, and that

* The table of comparative values by Sir George Shuckburgh, (Philosoph. Transact. for 1798, p. 196.) is strangely incompatible with every result to which my own reading has led me. It is the hasty attempt of a man accustomed to different studies; and one can neither pardon the presumption of obtruding such a slovenly performance on a subject where the utmost diligence was required, nor the affectation with which he apologizes for "descending from the dignity of philosophy."

of barley and oats in proportion. A sheep was rather sold high at a shilling, and an ox might be reckoned at ten or twelve.* The value of cattle is of course dependent upon their breed and condition; and we have unluckily no early account of butcher's meat; but we can hardly take a less multiple than about thirty for animal food, and eighteen or twenty for corn, in order to bring the prices of the thirteenth century to a level with those of the present day.† Combining the two, and setting the comparative dearness of cloth against the cheapness of fuel and many other articles, we may perhaps consider any given sum under Henry III. and Edward I. as equivalent in general command over commodities to about twenty-four or twenty-five times that nominal value at present. Under Henry VI., the coin had lost one-third of its weight in silver, which caused a proportional increase of money prices;‡ but, so far as I can perceive, there

* Blomefield's History of Norfolk, and Sir J. Cullum's of Hawsted, furnish several prices even at this early period. Most of them are collected by Sir F. Eden. Fleta reckons four shillings the average price of a quarter of wheat in his time. l. ii. c. 84. This writer has a digression on agriculture, whence however less is to be collected than we should expect.

† The fluctuations of price have unfortunately been so great of late years, that it is almost as difficult to determine one side of our equation as the other. Any reader, however, has it in his power to correct my proportions, and adopt a greater or less multiple, according to his own estimate of current prices, or the changes that may take place from the time when this is written.

‡ I have sometimes been surprized at the facility with which prices adjusted themselves to the quantity of silver contained in the current coin, in ages which appear too ignorant and too little commercial for the application of this mercantile principle. But the extensive dealings of the Jewish and Lombard usurers, who had many debtors in almost all parts of the country, would of itself introduce a knowledge, that silver, not its stamp, was the measure of value. I have mentioned in another place,

had been no diminution in the value of that metal. We have not much information as to the fertility of the mines which supplied Europe during the middle ages; but it is probable that the drain of silver towards the East, joined to the ostentatious splendour of courts, might fully absorb the usual produce. By the statute 15 H. VI. c. 2. the price up to which wheat might be exported is fixed at 6*s.* 8*d.*, a point no doubt above the average; and the private documents of that period, which are sufficiently numerous, lead to a similar result.* Sixteen will be a fair multiple, when we would

(vol. i. p. 185.) the heavy discontents excited by this debasement of the coin in France; but the more gradual enhancement of nominal prices in England seems to have prevented any strong manifestations of a similar spirit at the successive reductions in value which the coin experienced from the year 1300. The connexion however between commodities and silver was well understood. Wykes, an annalist of Edward I.'s age, tells us, that the Jews clipped our coin, till it retained hardly half its due weight, the effect of which was a general enhancement of prices, and decline of foreign trade: Mercatores transmarini cum mercimoniis suis regnum Angliæ minus solito frequentabant; necnon quod omnimoda venalium genera incomparabiliter solito fuerunt cariora. 2 Gale xv Script. p. 107. Another chronicler of the same age complains of bad foreign money, alloyed with copper; nec erat in quatuor aut quinque ex iis pondus unius denarii argenti. . . . . Eratque pessimum sæculum pro tali monetâ, et fiebant commutationes plurimæ in emptione et venditione rerum. Edward, as the historian informs us, bought in this bad money at a rate below its value, in order to make a profit; and fined some persons who interfered with his traffic. W. Hemingford, ad ann. 1299.

* These will chiefly be found in Sir F. Eden's table of prices; the following may be added from the account-book of a convent between 1415 and 1425. Wheat varied from 4*s.* to 6*s.*—barley from 3*s.* 2*d.* to 4*s.* 10*d.*—oats from 1*s.* 8*d.* to 2*s.* 4*d.*—oxen from 12*s.* to 16*s.*—sheep from 1*s.* 2*d.* to 1*s.* 4*d.*—butter ¼*d.* per lb.—eggs twenty-five for 1*d.*—cheese ½*d.* per lb. Lansdowne MSS. vol. i. no. 28 and 29. These prices do not always agree with those given in other documents of equal authority in the same period; but the value of provisions often varied in different counties, and still more so in different seasons of the year.

bring the general value of money in this reign to our present standard.*

But after ascertaining the proportional values of money at different periods by a comparison of the prices in several of the chief articles of expenditure, which is the only fair process, we shall sometimes be surprized at incidental facts of this class which seem irreducible to any rule. These difficulties arise not so much from the relative scarcity of particular commodities, which it is for the most part easy to explain, as from the change in manners and in the usual mode of living. We have reached in this age so high a pitch of luxury, that we can hardly believe or comprehend the frugality of ancient times; and have in general formed mistaken notions as to the habits of expenditure which then prevailed. Accustomed to judge of feudal and chivalrous ages by works of fiction, or by historians who embellish their writings with accounts

* I insert the following comparative table of English money from Sir Frederic Eden. The unit, or present value, refers of course to that of the shilling before the last coinage.

		Value of pound sterling present money.			Proportion.
Conquest,	1066	2	18	1½	2.906
28 E. I.	1300	2	17	5	2.871
18 E. III.	1344	2	12	5¼	2.622
20 E. III.	1346	2	11	8	2.583
27 E. III.	1353	2	6	6	2.325
13 H. IV.	1412	1	18	9	1.937
4 E. IV.	1464	1	11	0	1.55
18 H. VIII.	1527	1	7	6¾	1.378
34 H. VIII.	1543	1	3	3¼	1.163
36 H. VIII.	1545	0	13	11½	0.698
37 H. VIII.	1546	0	9	3¾	0.466
5 E. VI.	1551	0	4	7¼	0.232
6 E. VI.	1552	1	0	6¾	1.028
1 Mary	1553	1	0	5¾	1.024
2 Eliz.	1560	1	0	8	1.033
43 Eliz.	1601	1	0	0	1.000

of occasional festivals and tournaments, and sometimes inattentive enough to transfer the manners of the seventeenth to the fourteenth century, we are not at all aware of the usual simplicity with which the gentry lived under Edward I. or even Henry VI. They drank little wine; they had no foreign luxuries; they rarely or never kept male servants, except for husbandry; their horses, as we may guess by the price, were indifferent; they seldom travelled beyond their county. And even their hospitality must have been greatly limited, if the value of manors were really no greater than we find it in many surveys. Twenty-four seems a sufficient multiple when we would raise a sum mentioned by a writer under Edward I. to the same real value expressed in our present money, but an income of £10 or £20 was reckoned a competent estate for a gentleman; at least the lord of a single manor would seldom have enjoyed more. A knight who possessed £150 per annum passed for extremely rich.* Yet this was not equal in command over commodities to £4000 at present. But this income was comparatively free from taxation, and its expenditure lightened by the services of his villeins. Such a person however must have been among the most opulent of country-gentlemen. Sir John Fortescue speaks of five pounds a year as "a fair living for a yeoman," a class of whom he is not at all inclined to diminish the importance.† So, when Sir William

* Macpherson's Annals, p. 424. from Matt. Paris.

† Difference of Limited and Absolute Monarchy, p. 133.

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Drury, one of the richest men in Suffolk, bequeaths in 1493 fifty marks to each of his daughters, we must not imagine that this was of greater value than four or five hundred pounds at this day, but remark the family pride, and want of ready money, which induced country gentlemen to leave their younger children in poverty.* Or, if we read that the expense of a scholar at the university in 1514 was but five pounds annually, we should err in supposing that he had the liberal accommodation which the present age deems indispensable, but consider how much could be afforded for about sixty pounds, which will be not far from the proportion. And what would a modern lawyer say to the following entry in the churchwarden's accounts of St. Margaret, Westminster, for 1476: "Also paid to Roger Fylpott, learned in the law, for his counsel giving 3*s.* 8*d.*, *with four-pence for his dinner.*"† Though fifteen times the fee might not seem altogether inadequate at present, five shillings would hardly furnish the table of a barrister, even if the fastidiousness of our manners would admit of his accepting such a dole. But this fastidiousness,

* Hist. of Hawsted, p. 141.

† Nicholls's Illustrations, p. 2. One fact of this class did, I own, stagger me. The great earl of Warwick writes to a private gentleman, Sir Thomas Tudenham, begging the loan of ten or twenty pounds to make up a sum he had to pay. Paston Letters, vol. i. p. 84. What way shall we make this commensurate to the present value of money? But an ingenious friend suggested, what I do not question is the case, that this was one of many letters addressed to the adherents of Warwick, in order to raise by their contributions a considerable sum. It is curious in this light, as an illustration of manners.

which considers certain kinds of remuneration degrading to a man of liberal condition, did not prevail in those simple ages. It would seem rather strange that a young lady should learn needle-work and good-breeding in a family of superior rank, paying for her board; yet such was the laudable custom of the fifteenth and even sixteenth centuries, as we perceive by the Paston Letters, and later authorities.*

Labourers better paid than at present.

There is one very unpleasing remark which every one who attends to the subject of prices will be induced to make, that the labouring classes, especially those engaged in agriculture, were better provided with the means of subsistence in the reign of Edward III. or of Henry VI. than they are at present. In the fourteenth century, Sir John Cullum observes, a harvest man had four-pence a day, which enabled him in a week to buy a comb of wheat; but to buy a comb of wheat, a man must now (1784) work ten or twelve days.† So, under Henry VI., if meat was at a farthing and half the pound, which I suppose was about the truth, a labourer earning three-pence a day, or eighteen-pence in the week, could buy a bushel of wheat, at six shillings the quarter, and twenty-four pounds of meat for his family. A labourer at present, earning twelve shillings a week, can only buy half a bushel of wheat, at eighty shillings the quarter, and twelve pounds of meat at seven-pence. Several acts of parliament

* Paston Letters, vol. i. p. 244. † Hist. of Hawsted, p. 258. Cullum's Hawsted, p. 182.

regulate the wages that might be paid to labourers of different kinds. Thus the statute of labourers in 1350, fixes the wages of reapers during harvest at three-pence a day without diet, equal to five shillings at present; that of 23 H. VI. c. 12. in 1444, fixes the reaper's wages at five-pence, and those of common workmen in building at $3\frac{1}{2}d.$ equal to 6*s.* 8*d.* and 4*s.* 8*d.*; that of 11. H. VII. c. 22. in 1496, leaves the wages of labourers in harvest as before, but rather increases those of ordinary workmen. The yearly wages of a chief hind or shepherd by the act of 1444 were £1. 4*s.* equivalent to about £20, those of a common servant in husbandry, 18*s.* 4*d.* with meat and drink; they were somewhat augmented by the statute of 1496.* Yet, although these wages are regulated, as a maximum, by acts of parliament, which may naturally be supposed to have had a view rather towards diminishing than enhancing the current rate, I am not fully convinced that they were not rather beyond it; private accounts at least do not always correspond with these statutable prices.† And it is necessary to remember, that the uncertainty of employment, natural to so imperfect a state of husbandry, must have diminished the labourer's means of subsistence. Extreme dearth,

* See these rates more at length in Eden's State of the Poor, vol. i. p. 32, &c.

† In the Archæologia, vol. xviii. p. 281. we have a bailiff's account of expenses in 1387, where it appears that a ploughman had six-pence a week, and five shillings a year, with an allowance of diet; which seems to have been only pottage. These wages are certainly not more than fifteen shillings a week in present value; which, though materially above the average rate of agricultural labour, is less so than some of the statutes would lead us to expect. Other facts may be found of a similar nature.

not more owing to adverse seasons than to improvident consumption, was frequently endured.* But after every allowance of this kind, I should find it difficult to resist the conclusion, that, however the labourer has derived benefit from the cheapness of manufactured commodities, and from many inventions of common utility, he is much inferior in ability to support a family to his ancestors three or four centuries ago. I know not why some have supposed that meat was a luxury seldom obtained by the labourer. Doubtless he could not have procured as much as he pleased. But, from the greater cheapness of cattle, as compared with corn, it seems to follow, that a more considerable portion of his ordinary diet consisted of animal food than at present. It was remarked by Sir John Fortescue, that the English lived far more upon an animal diet than their rivals the French; and it was natural to ascribe their superior strength and courage to this cause.† I should feel much satisfaction in being convinced that no deterioration in the state of the labouring classes has really taken place; yet it cannot, I think, appear extraordinary to those who reflect, that the whole population of England, in the year 1377, did not

* See that singular book, Piers Plowman's Vision, p. 145. (Whitaker's edition,) for the different modes of living before and after harvest. The passage may be found in Ellis's Specimens, vol. i. p. 151.

† Fortescue's Difference between Abs. and Lim. Monarchy. p. 19. The passages in Fortescue, which bear on his favourite theme, the liberty and consequent happiness of the English, are very important, and triumphantly refute those superficial writers who would make us believe that they were a set of beggarly slaves.

much exceed 2,300,000 souls, about one-fifth of the results upon the last numeration, an increase with which that of the fruits of the earth cannot be supposed to have kept an even pace.*

Improvement in the moral character of Europe.

The second head to which I referred the improvements of European society in the latter period of the middle ages, comprehends several changes, not always connected with each other, which contributed to inspire a more elevated tone of moral sentiment, or at least to restrain the commission of crimes. But the general effect of these upon the human character is neither so distinctly to be traced, nor can it be arranged with so much attention to chronology as the progress of commercial wealth, or of the arts that depend upon it. We cannot, from any past experience, indulge the pleasing vision of a constant and parallel relation between the moral and intellectual energies, the virtues and the civilization of mankind. Nor is any problem connected with philosophical history more difficult than to compare the relative characters of different generations, especially if we include a large geographical surface in our estimate. Refinement has its evils as well as barbarism; the virtues that elevate a nation in one century pass in the next to a different region; vice changes its form without losing its essence; the marked features of individual character stand out in relief

* Besides the books to which I have occasionally referred, Mr. Ellis's Specimens of English Poetry, vol. i. chap. 13. contain a short, but well selected digression on the private life of the English in the middling and lower ranks about the fifteenth century.

from the surface of history, and mislead our judgement as to the general course of manners; while political revolutions and a bad constitution of government may always undermine or subvert the improvements to which more favourable circumstances have contributed. In comparing, therefore, the fifteenth with the twelfth century, no one would deny the vast increase of navigation and manufactures, the superior refinement of manners, the greater diffusion of literature. But should I assert that man had raised himself in the later period above the moral degradation of a more barbarous age, I might be met by the question, whether history bears witness to any greater excesses of rapine and inhumanity than in the wars of France and England under Charles VII., or whether the rough patriotism and fervid passions of the Lombards in the twelfth century were not better than the systematic treachery of their servile descendants three hundred years afterwards. The proposition must therefore be greatly limited; yet we can scarcely hesitate to admit, upon a comprehensive view, that there were several changes during the four last of the middle ages, which must naturally have tended to produce, and some of which did unequivocally produce a meliorating effect, within the sphere of their operation, upon the moral character of society.

Elevation of the lower ranks.

The first and perhaps the most important of these, was the gradual elevation of those whom unjust systems of polity had long depressed; of the people itself, as opposed to the small number

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of rich and noble, by the abolition or desuetude of domestic and prædial servitude, and by the privileges extended to corporate towns. The condition of slavery is indeed perfectly consistent with the observance of moral obligations; yet reason and experience will justify the sentence of Homer, that he who loses his liberty loses half his virtue. Those who have acquired, or may hope to acquire, property of their own, are most likely to respect that of others; those whom law protects as a parent are most willing to yield her a filial obedience; those who have much to gain by the good-will of their fellow-citizens are most interested in the preservation of an honourable character. I have been led, in different parts of the present work, to consider these great revolutions in the order of society under other relations than that of their moral efficacy; and it will therefore be unnecessary to dwell upon them; especially as this efficacy is indeterminate, though, I think, unquestionable, and rather to be inferred from general reflections, than capable of much illustration by specific facts.

Police.

We may reckon, in the next place, among the causes of moral improvement, a more regular administration of justice according to fixed laws, and a more effectual police. Whether the courts of judicature were guided by the feudal customs or the Roman law, it was necessary for them to resolve litigated questions with precision and uniformity. Hence a more distinct theory of justice and good faith was gradually apprehended; and

the moral sentiments of mankind were corrected, as on such subjects they often require to be, by clearer and better grounded inferences of reasoning. Again, though it cannot be said that lawless rapine was perfectly restrained even at the end of the fifteenth century, a sensible amendment had been every where experienced. Private warfare, the licensed robbery of feudal manners, had been subjected to so many modifications by the kings of France, and especially by St. Louis, that it can hardly be traced beyond the fourteenth century. In Germany and Spain it lasted longer; but the various associations for maintaining tranquillity in the former country had considerably diminished its violence before the great national measure of public peace adopted under Maximilian.* Acts of outrage committed by powerful men became less frequent as the executive government acquired more strength to chastise them. We read that St. Louis, the best of French kings, imposed a fine upon the lord of Vernon for permitting a merchant to be robbed in his territory between sunrise and sunset. For, by the customary law, though in general ill observed, the lord

* Besides the German historians, see Du Cange, v. Ganerbium, for the confederacies in the empire, and Hermandatum for those in Castile. These appear to have been merely voluntary associations, and perhaps directed as much towards the prevention of robbery, as of what is strictly called private war. But no man can easily distinguish offensive war from robbery except by its scale; and where this was so considerably reduced, the two modes of injury almost coincide. In Aragon, there was a distinct institution for the maintenance of peace, the kingdom being divided into unions or juntas, with a chief officer, called Suprajunctarius, at their head. Du Cange, v. Juncta.

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was bound to keep the roads free from depredators in the day-time, in consideration of the toll he received from passengers.* The same prince was with difficulty prevented from passing a capital sentence on Enguerrand de Coucy, a baron of France, for a murder.† Charles the Fair actually put to death a nobleman of Languedoc for a series of robberies, notwithstanding the intercession of the provincial nobility.‡ The towns established a police of their own for internal security, and rendered themselves formidable to neighbouring plunderers. Finally, though not before the reign of Louis XI., an armed force was established for the preservation of police.§ Various means were adopted in England to prevent robberies, which indeed were not so frequently perpetrated, as they were on the continent, by men of high condition. None of these perhaps had so much efficacy as the frequent sessions of judges under commissions of gaol delivery. But the spirit of this country has never brooked that coercive police which cannot exist without breaking in upon personal liberty by irksome regulations, and discretionary

* Henault, Abrégé Chronol. à l'an 1255. The institutions of Louis IX. and his successors relating to police form a part, though rather a smaller part than we should expect from the title, of an immense work, replete with miscellaneous information, by Delamare, Traité de la Police, 4 vols. in folio. A sketch of them may be found in Velly, t. v. p. 349.; t. xviii. p. 437.

† Velly, t. v. p. 162., where this incident is told in an interesting manner from William de Nangis. Boulainvilliers has taken an extraordinary view of the king's behaviour. Hist de l'Ancien Gouvernement, t. ii. p. 26. In his eyes princes and plebeians were made to be the slaves of a feudal aristocracy.

‡ Velly, t. viii. p. 132.

§ id. xviii. p. 437.

exercise of power; the sure instrument of tyranny, which renders civil privileges at once nugatory and insecure, and by which we should dearly purchase some real benefits connected with its slavish discipline.

Religious sects.

I have some difficulty in adverting to another source of moral improvement during this period, the growth of religious opinions adverse to those of the established church, both on account of its great obscurity, and because many of these heresies were mixed up with an excessive fanaticism. But they fixed themselves so deeply in the hearts of the inferior and more numerous classes, they bore, generally speaking, so immediate a relation to the state of manners, and they illustrate so much that more visible and eminent revolution which ultimately arose out of them in the sixteenth century, that I must reckon these among the most interesting phænomena in the progress of European society.

Many ages elapsed, during which no remarkable instance occurs of a popular deviation from the prescribed line of belief; and pious Catholics console themselves by reflecting that their forefathers, in those times of ignorance, slept at least the sleep of orthodoxy, and that their darkness was interrupted by no false lights of human reasoning.* But from the twelfth century this can no longer be their boast. An inundation of heresy broke in that age upon the church, which

* Fleury, 3me Discours sur l'Hist. Ecclés.

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no persecution was able thoroughly to repress, till it finally overspread half the surface of Europe. Of this religious innovation we must seek the commencement in a different part of the globe. The Manicheans afford an eminent example of that durable attachment to a traditional creed, which so many ancient sects, especially in the east, have cherished through the vicissitudes of ages, in spite of persecution and contempt. Their plausible and widely extended system had been in early times connected with the name of Christianity, however incompatible with its doctrines and its history. After a pretty long obscurity, the Manichean theory revived with some modification in the western parts of Armenia, and was propagated in the eighth and ninth centuries by a sect denominated Paulicians. Their tenets are not to be collected with absolute certainty from the mouths of their adversaries, and no apology of their own survives. There seems however to be sufficient evidence that the Paulicians, though professing to acknowledge and even to study the apostolical writings, ascribed the creation of the world to an evil deity, whom they supposed also to be the author of the Jewish law, and consequently rejected all the Old Testament. Believing, with the ancient Gnostics, that our Saviour was clothed on earth with an impassive celestial body, they denied the reality of his death and resurrection.* These errors exposed them to a

* The most authentic account of the Paulicians is found in a little treatise of Petrus Siculus, who lived about 870, under Basil the

long and cruel persecution, during which a colony of exiles was planted by one of the Greek emperors in Bulgaria.* From this settlement they silently propagated their Manichean creed over the western regions of Christendom. A large part of the commerce of those countries with Constantinople was carried on for several centuries by the channel of the Danube. This opened an immediate intercourse with the Paulicians, who may be traced up that river through Hungary and

Macedonian. He had been employed on an embassy to Tephrice, the principal town of these heretics, so that he might easily be well informed; and, though he is sufficiently bigotted, I do not see any reason to question the general truth of his testimony, especially as it tallies so well with what we learn of the predecessors and successors of the Paulicians. They had rejected several of the Manichean doctrines, those, I believe, which were borrowed from the Oriental, Gnostic and Cabbalistic philosophy of emanation; and therefore readily condemned Manes, πεοθυμως αναθεμαλιζουσι Μανηλα. But they retained his capital errors, so far as regarded the principle of dualism, which he had taken from Zerdusht's religion, and the consequences he had derived from it. Petrus Siculus enumerates six Paulician heresies. 1. They maintained the existence of two deities, the one evil, and the creator of this world, the other good, called παλης επουρανιος, the author of that which is to come. 2. They refused to worship the Virgin, and asserted that Christ brought his body from Heaven. 3. They rejected the Lord's supper: 4. And the adoration of the cross. 5. They denied the authority of the Old Testament; but admitted the New, except the epistles of St. Peter, and, perhaps, the Apocalypse. 6. They did not acknowledge the order of priests.

There seems every reason to suppose, that the Paulicians, notwithstanding their mistakes, were endowed with sincere and zealous piety, and studious of the Scriptures. A Paulician woman asked a young man, if he had read the Gospels: he replied, that laymen were not permitted to do so, but only the clergy: ουκ εξεστιν ημιν τοις κοσμικοις ουτε ταυτα αναγινωσκειν, ει μη τοις ιερευσι μονοις. p. 57. A curious proof that the Scriptures were already forbidden in the Greek church, which, I am inclined to believe, notwithstanding the leniency with which Protestant writers have treated it, was always more corrupt and more intolerant than the Latin.

* Gibbon, c. 54. This chapter of the historian of the Decline and Fall upon the Paulicians appears to be accurate, as well as luminous, and is at least far superior to any modern work on the subject.

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Bavaria, or sometimes taking the route of Lombardy, into Swisserland and France.* In the last country, and especially in its southern and eastern provinces, they became conspicuous under a variety of names; such as Catharists, Picards, Pa-

* It is generally agreed, that the Manicheans from Bulgaria did not penetrate into the west of Europe before the year 1000; and they seem to have been in small numbers till about 1140. We find them, however, early in the eleventh century. Under the reign of Robert in 1007 several heretics were burned at Orleans for tenets which are represented as Manichean. Velly, t. ii. p. 307. These are said to have been infected from Italy; and the heresy began to strike root in that country about the same time. Muratori, Dissert. 60. (Antichità Italiane, t. iii. p. 304.) The Italian Manicheans were generally called Paterini, the meaning of which word has never been explained. We find few traces of them in France at this time; but about the beginning of the twelfth century, Guibert, bishop of Soissons, describes the heretics of that city, who denied the reality of the death and resurrection of Jesus Christ, and rejected the sacraments. Hist. Littéraire de la France, t. x. p. 451. Before the middle of that age, the Cathari, Henricians, Petrobussians and others appear, and the new opinions attracted universal notice. Some of these sectaries, however, were not Manicheans. Mosheim, vol. iii. p. 116.

The acts of the inquisition of Toulouse, published by Limborch from an ancient manuscript, (stolen, as I presume, though certainly not by himself, out of the archives of that city,) contain many additional proofs, that the Albigenses held the Manichean doctrine. Limborch himself will guide the reader to the principal passages, p. 80. In fact, the proof of Manicheism among the heretics of the twelfth century is so strong, (for I have confined myself to those of Languedoc, and could easily have brought other testimony as to the Cathari,) that I should never have thought of arguing the point, but for the confidence of some modern ecclesiastical writers. What can we think of one who says, "It was not unusual to stigmatize new sects with the odious name of Manichees, though *I know no evidence* that there were any real remains of that ancient sect in the twelfth century." Milner's History of the Church, vol. iii. p. 380. Though this writer was by no means learned enough for the task he undertook, he could not be ignorant of facts related by Mosheim and other common historians.

I will only add, in order to obviate cavilling, that I use the word Albigenses for the Manichean sects, without pretending to assert, that their doctrines prevailed more in the neighbourhood of Albi than elsewhere. The main position is, that a large part of the Languedocian heretics against whom the crusade was directed had imbibed the Paulician opinions. If any one chuses rather to call them Catharists it will not be material.

terins, but above all, Albigenses. It is beyond a doubt that many of these sectaries owed their origin to the Paulicians; the appellation of Bulgarians was distinctively bestowed upon them; and, according to some writers, they acknowledged a primate or patriarch resident in that country.*. The tenets ascribed to them by all contemporary authorities coincide so remarkably with those held by the Paulicians, and in earlier times by the Manicheans, that I do not see how we can reasonably deny what is confirmed by separate and uncontradicted testimonies, and contains no intrinsic want of probability.†

* Mat. Paris, p. 267. (A.D. 1223.) Circa dies istos, hæretici Albigenses constituerunt sibi Antipapam in finibus Bulgarorum, Croatiæ et Dalmatiæ, nomine Bartholomæum, &c. We are assured by good authorities that Bosnia was full of Manicheans and Arians as late as the middle of the fifteenth century. Æneas Sylvius, p. 407. Spondanus, ad ann. 1460. Mosheim.

† There has been so prevalent a disposition among English divines to vindicate not only the morals and sincerity, but the orthodoxy of these Albigenses, that I deem it necessary to confirm what I have said in the text by some authorities, especially as few readers have it in their power to examine this very obscure subject. Petrus Monachus, a Cistercian monk who wrote a history of the crusade against the Albigenses, gives an account of the tenets maintained by the different heretical sects. Many of them asserted two principles or creative beings; a good one for things invisible, an evil one for things visible; the former author of the New Testament, the latter of the Old. Novum Testamentum benigno deo, vetus vero maligno attribuebant; et illud omninò repudiabant, præter quasdam auctoritates, quas de Veteri Testamento, Novo sunt insertæ, quas ob Novi reverentiam Testamenti, recipere dignum æstimabant. A vast number of strange errors are imputed to them, most of which are not mentioned by Alanus, a more dispassionate writer. Du Chesne, Scriptores Francorum, t. v. p. 556. This Alanus de Insulis, whose treatise against heretics, written about 1200, was published by Masson at Lyons in 1612, has left, I think, conclusive evidence of the Manicheism of the Albigenses. He states their argument upon every disputed point as fairly as possible, though his refutation is of course more at length. It appears that great discrepancies of opinion existed among these heretics, but the

But though the derivation of these heretics called Albigenses from Bulgaria is sufficiently proved, it is by no means to be concluded that all who incurred the same imputation either derived their faith from the same country, or had adopted the Manichean theory of the Paulicians. From the very invectives of their enemies, and the acts of the inquisition, it is manifest that almost every shade of heterodoxy was found among these dissidents, till it vanished in a simple protestation against the wealth and tyranny of the clergy. Those who were absolutely free from any taint of

general tenor of their doctrines is evidently Manichean. Aiunt hæretici temporis nostri quod duo sunt principia rerum, principium lucis et principium tenebrarum, &c. This opinion, strange as we may think it, was supported by Scriptural texts; so insufficient is a mere acquaintance with the sacred writings to secure unlearned and prejudiced minds from the wildest perversions of their meaning! Some denied the reality of Christ's body; others his being the son of God; many the resurrection of the body, some even a future state. They asserted, in general, the Mosaic law to have proceeded from the devil, proving this by the crimes committed during its dispensation, and by the words of St. Paul, "the law entered that sin might abound." They rejected infant baptism, but were divided as to the reason; some saying, that infants could not sin, and did not need baptism; others, that they could not be saved without faith, and consequently that it was useless. They held sin after baptism to be irremissible. It does not appear that they rejected either of the sacraments. They laid great stress upon the imposition of hands, which seems to have been their distinctive rite.

One circumstance, which both Alanus and Robertus Monachus mention, and which other authorities confirm, is their division into two classes; the Perfect, and the Credentes, or Consolati, both of which appellations are used. The former abstained from animal food, and from marriage, and led in every respect an austere life. The latter were a kind of lay brethren, living in a secular manner. This distinction is thoroughly Manichean, and leaves no doubt as to the origin of the Albigenses. See Beausobre, Hist. du Manichéisme, t. ii. p. 762. and 777. This candid writer represents the early Manicheans as a harmless and austere set of enthusiasts, exactly what the Paulicians and Albigenses appear to have been in succeeding ages. As many calumnies were vented against one as the other.

Manicheism are properly called Waldenses; a name perpetually confounded in later times with that of Albigenses, but distinguishing a sect probably of separate origin, and at least of different tenets. These, according to the majority of writers, took their appellation from Peter Waldo, a merchant of Lyons, the parent, about the year 1160, of a congregation of seceders from the church, who spread very rapidly over France and Germany.* According to others, the original Wal- Waldenses.

* The contemporary writers seem uniformly to represent Waldo as the founder of the Waldenses; and I am not aware that they refer the locality of that sect to the vallies of Piedmont, between Exiles and Pignerol, (see Leger's map,) which have so long been distinguished as the native country of the Vaudois. In the acts of the inquisition, we find Waldenses, sive pauperes de Lugduno, used as equivalent terms; and it can hardly be doubted, that the poor men of Lyons were the disciples of Waldo. Alanus, the second book of whose treatise against heretics is an attack upon the Waldenses, expressly derives them from Waldo. Petrus Monachus does the same. These seem strong authorities, as it is not easy to perceive what advantage they could derive from misrepresentation. It has been however a position zealously maintained by some modern writers of respectable name, that the people of the vallies had preserved a pure faith, for several ages before the appearance of Waldo. I have read what is advanced on this head by Leger, (Histoire des Eglises Vaudoises,) and by Allix, (Remarks on the Ecclesiastical History of the Churches of Piedmont,) but without finding any sufficient proof for this supposition, which nevertheless is not to be rejected as absolutely improbable. Their best argument is deduced from an ancient poem, called La Noble Loiçon, an original manuscript of which is in the public library of Cambridge. This poem is alledged to bear date in 1100, more than half a century before the appearance of Waldo. But the lines that contain the date are loosely expressed, and may very well suit with any epoch before the termination of the twelfth century.

Ben ha mil et cent ans compli entierament,
Che fu scritta loro que sen al derier temp.
Eleven hundred years are now gone and past,
Since thus it was written; these times are the last.

I have found however a passage in a late work, which remarkably illustrates the antiquity of Alpine protestantism, if we may depend on the date it assigns to the quotation. Mr. Planta's History of Switzerland, p. 93. 4to edit. contains the following note. "A cu-

denses were a race of uncorrupted shepherds, who, in the vallies of the Alps, had shaken off, or perhaps never learned, the system of superstition on which the Catholic church depended for its ascendancy. I am not certain whether their existence can be distinctly traced beyond the preaching of Waldo, but it is well known that the proper seat of the Waldenses or Vaudois has long continued to be in certain vallies of Piedmont. These pious and innocent sectaries, of whom the very monkish historians speak well, appear to have nearly resembled the modern Moravians. They had ministers of their own appointment, and denied the lawfulness of oaths and of capital punishment. In other respects their opinions probably were not far removed from those usually called protestant. A simplicity of dress, and especially the use of wooden sandals, was affected by this people.*

rious passage, singularly descriptive of the character of the Swiss, has lately been discovered in a M.S. chronicle of the Abbey of Corvey, which appears to have been written about the beginning of the twelfth century. Religionem nostram, et omnium Latinæ ecclesiæ Christianorum fidem, laici ex Suaviâ, Suiciâ, et Bavariâ humiliare voluerunt; homines seducti ab antiquâ progenie simplicium hominum, qui Alpes et viciniam habitant, et semper amant antiqua. In Suaviam, Bavariam et Italiam borealem sæpe intrant illorum (ex Suiciâ) mercatores, qui biblia ediscunt memoriter, et ritus ecclesiæ aversantur, quos credunt esse novos. Nolunt imagines venerari, reliquias sanctorum aversantur, olera comedunt, rarò masticantes carnem, alii nunquam. Appellamus eos idcircò Manichæos. Horum quidam ab Hungariâ ad eos convenerunt, &c." It is a pity that the quotation has been broken off, as it might have illustrated the connexion of the Bulgarians with these sectaries.

* The Waldenses were always considered as much less erroneous in their tenets than the Albigenses, or Manicheans. Erant præterea alii hæretici, says Robertus Monachus in the passage above quoted, qui Waldenses dicebantur, a quodam Waldio nomine Lugdunensi. Hi quidem mali erant, sed comparatione aliorum hæreticorum longè minus perversi; in multis enim nobiscum conveniebant, in qui-

I have already had occasion to relate the severe persecution which nearly exterminated the Albigenses of Languedoc at the close of the twelfth century, and involved the counts of Toulouse in their ruin. The Catharists, a fraternity of the same Paulician origin, more dispersed than the Albigenses, had previously sustained a similar trial. Their belief was certainly a compound of strange errors with truth; but it was attended by qualities of a far superior lustre to orthodoxy, by a sincerity, a piety, and a self-devotion, that almost purified the age in which they lived.* It is always

busdam dissentiebant. The only faults he seems to impute to them are the denial of the lawfulness of oaths and capital punishment, and the wearing wooden shoes. By this peculiarity of wooden sandals (sabots) they got the name of Sabbatati or Insabbatati. (Du Cange.) William de Puy, another historian of the same time, makes a similar distinction. Erant quidam Ariani, quidam Manichæi, quidam etiam Waldenses sive Lugdunenses, qui licet inter se dissides, omnes tamen in animarum perniciem contra fidem Catholicam conspirabant; et illi quidem Waldenses contra alios acutissimè disputant. Du Chesne, t. v. p. 666. Alanus, in his second book, where he treats of the Waldenses, charges them principally with disregarding the authority of the church and preaching without a regular mission. It is evident however from the acts of the Inquisition, that they denied the existence of purgatory; and I should suppose that, even at that time, they had thrown off most of the popish system of doctrine, which is so nearly connected with clerical wealth and power. The difference made in these records between the Waldenses and the Manichean sects shews that the imputations cast upon the latter were not indiscriminate calumnies. See Limborch, p. 201. and 268.

The History of Languedoc, by Vaissette and Vich, contains a very good account of the sectaries in that country; but I have not immediate access to the book. I I believe that proof will be found of the distinction between the Waldenses and Albigenses in t. iii. p. 446. But I am satisfied that no one who has looked at the original authorities will dispute the proposition. These Benedictin historians represent the Henricians, an early sect of reformers, condemned by the council of Lombez in 1165, as Manichees. Mosheim considers them as of the Vaudois school. They appeared some time before Waldo.

* The general testimony of their enemies to the purity of morals among the Languedocian and Ly-

important to perceive that these high moral excellencies have no necessary connexion with speculative truths; and upon this account I have been more disposed to state explicitly the real Manicheism of the Albigenses; especially as Protestant writers, considering all the enemies of Rome as their friends, have been apt to place the opinions of these sectaries in a very false light. In the course of time, undoubtedly, the system of their Paulician teachers would have yielded, if the inquisitors had permitted the experiment, to a more accurate study of the Scriptures, and to the knowledge which they would have imbibed from the church itself. And, in fact, we find that the pe-

onese sectaries is abundantly sufficient. One Regnier, who had lived among them, and became afterwards an inquisitor, does them justice in this respect. See Turner's History of England for several other proofs of this. It must be confessed, that the Catharists are not free from the imputation of promiscuous licentiousness. But whether this was a mere calumny, or partly founded upon truth, I cannot determine. Their prototypes, the ancient Gnostics, are said to have been divided into two parties, the austere and the relaxed; both condemning marriage for opposite reasons. Alanus, in the book above quoted, seems to have taken up several vulgar prejudices against the Cathari. He gives an etymology of their name à catto; quia osculantur posteriora catti; in cujus specie, ut aiunt, appareret iis Lucifer. p. 146. This notable charge was brought afterwards against the Templars.

As to the Waldenses, their innocence is out of all doubt. No book can be written in a more edifying manner than La Noble Loiçon, of which large extracts are given by Leger, in his Histoire des Eglises Vaudoises. Four lines are quoted by Voltaire, (Hist. Universelle, c. 69.) as a specimen of the Provençal language, though they belong rather to the patois of the vallies. But as he has not copied them rightly, and as they illustrate the subject of this note, I shall repeat them here from Leger. p. 28.

Que sel se troba alcun bon que vollia amar Dio e temer Jeshu Xrist,
Que non vollia maudire, ni jura, ni mentir,
Ni avoutrar, ni aucire, ni penre de l'autruy,
Ni venjar se de li sio ennemie,
Illi dison quel es Vaudes e degne de murir.

culiar tenets of Manicheism died away after the middle of the thirteenth century, although a spirit of dissent from the established creed broke out in abundant instances during the two subsequent ages.

We are in general deprived of explicit testimonies in tracing the revolutions of popular opinion. Much must therefore be left to conjecture; but I am inclined to attribute a very extensive effect to the preaching of these heretics. They appear in various countries nearly during the same period, in Spain, Lombardy, Germany, Flanders and England, as well as France. Thirty unhappy persons, convicted of denying the sacraments, are said to have perished at Oxford by cold and famine in the reign of Henry II. In every country the new sects appear to have spread chiefly among the lower people, which, while it accounts for the imperfect notice of historians, indicates a more substantial influence upon the moral condition of society than the conversion of a few nobles or ecclesiastics.*

* It would be difficult to specify all the dispersed authorities which attest the existence of the sects derived from the Waldenses and Paulicians in the twelfth, thirteenth and fourteenth centuries. Besides Mosheim, who has paid considerable attention to the subject, I would mention some articles in Du Cange, which supply gleanings; namely, Beghardi, Bulgari, Lollardi, Paterini, Picardi, Pifli, Populicani.

Upon the subject of the Waldenses and Albigenses generally, I have borrowed some light from Mr. Turner's History of England, vol. ii. p. 377. 393. This learned writer has seen some books that have not fallen into my way; and I am indebted to him for a knowledge of Alanus's treatise, which I have since read. At the same time, I must observe, that Mr. Turner has not perceived the essential distinction between the two leading sects.

The name of Albigenses does not frequently occur after the middle of the thirteenth century; but the Waldenses, or sects bearing that denomination, were dispersed over Europe. As a term of different

But even where men did not absolutely enlist under the banners of any new sect, they were stimulated by the temper of their age to more zealous and independent discussion of their religious system. A curious illustration of this is furnished by one of the letters of Innocent III. He had been informed by the bishop of Metz, as he states to the clergy of the diocese, that no small multitude of laymen and women having procured a translation of the gospels, epistles of St. Paul, the psalter, Job, and other books of Scripture, to be made for them into French, meet in secret conventicles to hear them read, and preach to each other;

reproach was derived from the word Bulgarian, so *vauderie*, or the profession of the Vaudois, was sometimes applied to witchcraft. Thus in the proceedings of the Chambre Brulante at Arras, in 1459, against persons accused of sorcery, their crime is denominated *vauderie*. The fullest account of this remarkable story is found in the Memoirs of Du Clercq, first published in the general collection of Historical Memoirs, t. ix. p. 430. 471. It exhibits a complete parallel to the events that happened in 1682 at Salem in New England. A few obscure persons were accused of *vauderie*, or witchcraft. After their condemnation, which was founded on confessions obtained by torture, and afterwards retracted, an epidemical contagion of superstitious dread was diffused all around. Numbers were arrested, burned alive by order of a tribunal instituted for the detection of this offence, or detained in prison; so that no person in Arras thought himself safe. It was believed that many were accused for the sake of their possessions, which were confiscated to the use of the church. At length the duke of Burgundy interfered, and put a stop to the persecutions. The whole narrative in Du Clercq is interesting, as a curious document of the tyranny of bigots, and of the facility with which it is turned to private ends.

To return to the Waldenses: the principal course of their emigration is said to have been into Bohemia, where, in the fifteenth century, the name was borne by one of the seceding sects. By their profession of faith, presented to Ladislaus Posthumus, it appears that they acknowledged the corporal presence in the eucharist, but rejected purgatory and other Romish doctrines. See it in the Fasciculus Rerum expetendarum et fugiendarum, a collection of treatises illustrating the origin of the Reformation, originally published at Cologne in 1535, and reprinted at London in 1690.

avoiding the company of those who do not join in their devotion, and having been reprimanded for this by some of their parish priests have withstood them, alledging reasons from the Scriptures, why they should not be so forbidden. Some of them too deride the ignorance of their ministers, and maintain that their own books teach them more than they can learn from the pulpit, and that they can express it better. Although the desire of reading the Scriptures, Innocent proceeds, is rather praiseworthy than reprehensible, yet they are to be blamed for frequenting secret assemblies, for usurping the office of preaching, deriding their own ministers, and scorning the company of such as do not concur in their novelties. He presses the bishop and chapter to discover the author of this translation, which could not have been made without a knowledge of letters; and what were his intentions, and what degree of orthodoxy and respect for the holy see those who used it possessed. This letter of Innocent III., however, considering the nature of the man, is sufficiently temperate and conciliatory. It seems not to have answered its end; for in another letter he complains that some members of this little association continued refractory, and refused to obey either the bishop or the pope.*

* Opera Innocent. III. p. 468. 537. A translation of the Bible had been made by direction of Peter Waldo; but whether this used in Lorrain was the same, does not appear. Metz was full of the Vaudois, as we find by other authorities.

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In the eighth and ninth centuries, when the Vulgate had ceased to be generally intelligible, there is no reason to suspect any intention in the church to deprive the laity of the Scriptures. Translations were freely made into the vernacular languages, and perhaps read in churches, although the acts of saints were generally deemed more instructive. Louis the Debonair is said to have caused a German version of the New Testament to be made. Otfrid, in the same century, rendered the gospels, or rather abridged them, into German verse. This work is still extant, and is in several respects an object of curiosity.* In the eleventh or twelfth century, we find translations of the Psalms, Job, Kings and the Maccabees into French.† But after the diffusion of heretical opinions, or, what was much the same thing, of free inquiry, it became expedient to secure the orthodox faith from lawless interpretation. Accordingly the council of Toulouse, in 1229, prohibited the laity from possessing the Scriptures; and this precaution was frequently repeated upon subsequent occasions.

The ecclesiastical history of the thirteenth or fourteenth centuries teems with new sectaries and schismatics, various in their aberrations of opinion, but all concurring in detestation of the established church.‡ They endured severe persecutions with

* Schilteri Thesaurus Antiq. Teutonicorum, t. ii.

† Mém. de l'Acad. des Inscript. t. xvii. p. 720.

‡ The application of the visions of the Apocalypse to the corruptions of Rome has commonly been said to have been first made by the

a sincerity and firmness which in any cause ought to command respect. But in general we find an extravagant fanaticism among them; and I do not know how to look for any melioration of society from the Franciscan seceders, who quibbled about the property of things consumed by use, or from the mystical visionaries of different appellations, whose moral practice was sometimes more than equivocal. Those who feel any curiosity about such subjects, which are by no means unimportant as they illustrate the history of the human mind, will find them treated very fully by Mosheim. But the original sources of information are not always accessible in this country, and the research would perhaps be more fatiguing than profitable.

Lollards of England.

I shall, for an opposite reason, pass slightly over the great revolution in religious opinion wrought in England by Wicliffe, which will generally be familiar to the reader from our common historians. Nor am I concerned to treat of theological inquiries, or to write a history of the church. Considered in its effect upon manners, the sole point which these pages have in view, the preaching of this new sect certainly produced an extensive reformation. But their virtues were by no means free from some unsocial qualities, in which, as well as in their superior attributes, the Lollards bear a

Franciscan seceders. But it may be traced higher, and is remarkably pointed out by Dante.

Di voi pastor s'accorse 'l Vangelista,
Quando colei, chi siede sovra l' acque,
Puttaneggiar co' regi a lui fù vista.
Inferno, Cant. xix.

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very close resemblance to the Puritans of Elizabeth's reign; a moroseness that proscribed all cheerful amusements, an uncharitable malignity that made no distinction in condemning the established clergy, and a narrow prejudice that applied the rules of the Jewish law to modern institutions.* Some of their principles were far more dangerous to the good order of society, and cannot justly be ascribed to the Puritans, though they grew afterwards out of the same soil. Such was the notion, which is imputed also to the Albigenses, that civil magistrates lose their right to govern by committing sin, or, as it was quaintly expressed in the seventeenth century, that dominion is founded in grace. These extravagances however do not belong to the learned and politic Wicliffe, however they might be adopted by some of his enthusiastic disciples.† Fostered by the general ill-will towards the church, his principles made vast progress in England, and, unlike those of earlier sectaries,

* Walsingham, p. 238. Lewis's Life of Peacock, p. 65. Bishop Peacock's answer to the Lollards of his time contains passages well worthy of Hooker, both for weight of matter and dignity of style, setting forth the necessity and importance of "the moral law of kinde, or moral philosophie," in opposition to those who derive all morality from revelation.

This great man fell afterwards under the displeasure of the church for propositions, not indeed heretical, but repugnant to her scheme of spiritual power. He asserted, indirectly, the right of private judgement, and wrote on theological subjects in English, which gave much offence. In fact, Peacock seems to have hoped that his acute reasoning would convince the people, without requiring an implicit faith. But he greatly misunderstood the principle of an infallible church. Lewis's life of Peacock does justice to his character, which, I need not say, is unfairly represented by such historians as Collier, and such antiquaries as Thomas Hearne.

† Lewis's Life of Wicliffe, p. 115. Lenfant, Hist. du Concile de Constance, t. i. p. 213.

were embraced by men of rank and civil influence. Notwithstanding the check they sustained by the sanguinary law of Henry IV. it is highly probable that multitudes secretly cherished them down to the æra of the Reformation.

Hussites of Bohemia.

From England the spirit of religious innovation was propagated into Bohemia; for though John Huss was very far from embracing all the doctrinal system of Wicliffe, it is manifest that his zeal had been quickened by the writings of that reformer.* Inferior to the Englishman in ability, but exciting greater attention by his constancy and sufferings, as well as by the memorable war which his ashes kindled, the Bohemian martyr was even more eminently the precursor of the Reformation. But still regarding these dissensions merely in a temporal light, I cannot assign any beneficial effect to the schism of the Hussites, at least in its immediate results, and in the country where it appeared. Though some degree of sympathy with their cause is inspired by resentment at the ill faith of their adversaries, and by the associations of civil and religious liberty, we cannot estimate the Taborites and other sectaries of that description but as fero-

* Huss does not appear to have rejected any of the peculiar tenets of popery. Lenfant, p. 414. He embraced, like Wicliffe, the predestinarian system of Augustin, without pausing at any of those inferences, apparently deducible from it, which, in the heads of enthusiasts, may produce such extensive mischief. These were maintained by Huss, (id. p. 328.) though not perhaps so crudely as by Luther. Every thing relative to the history and doctrine of Huss and his followers will be found in Lenfant's three works, on the councils of Pisa, Constance, and Basle.

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cious and desperate fanatics.* Perhaps beyond the confines of Bohemia more substantial good may have been produced by the influence of its reformation, and a better tone of morals inspired into Germany. But I must again repeat that upon this obscure and ambiguous subject I assert nothing definitely, and little with confidence. The tendencies of religious dissent in the four ages before the Reformation appear to have generally conduced towards the moral improvement of mankind; and facts of this nature occupy a far greater space in a philosophical view of society during that period, than we might at first imagine; but every one who is disposed to prosecute this inquiry will assign their character according to the result of his own investigations.

Institution of chivalry.

But the best school of moral discipline which the middle ages afforded was the institution of chivalry. There is something perhaps to allow for the partiality of modern writers upon this interesting subject; yet our most sceptical criticism must assign a decisive influence to this great source of human improvement. The more deeply it is considered, the more we shall become sensible of its importance.

There are, if I may so say, three powerful spirits, which have from time to time moved over the face of the waters, and given a predominant impulse to the moral sentiments and energies of

* Lenfant, Hist. de la Guerre des Hussites et du Concile de Basle. Schmidt, Hist. des Allemands, t. v.

mankind. These are the spirits of liberty, of religion, and of honour. It was the principal business of chivalry to animate and cherish the last of these three. And whatever high magnanimous energy the love of liberty or religious zeal has ever imparted, was equalled by the exquisite sense of honour which this institution preserved.

Its origin.

It appears probable, that the custom of receiving arms at the age of manhood with some solemnity was of immemorial antiquity among the nations that overthrew the Roman empire. For it is mentioned by Tacitus to have prevailed among their German ancestors; and his expressions might have been used with no great variation to describe the actual ceremonies of knighthood.* There was even in that remote age a sort of public trial as to the fitness of the candidate, which, though perhaps confined to his bodily strength and activity, might be the germ of that refined investigation which was thought necessary in the perfect stage of chivalry. Proofs, though rare and incidental, might be adduced to shew, that in the time of Charlemagne, and even earlier, the sons of monarchs at least did not assume manly arms without a regular investiture. And in the eleventh century, it is evident that this was a general practice.†

* Nihil neque publicæ neque privatæ rei nisi armati agunt. Sed arma sumere non ante cuiquam moris, quàm civitas suffecturum probaverit. Tum in ipso concilio, vel principum aliquis, vel pater, vel propinquus scuto frameâque juvenem ornant; hæc apud eos toga, hic primus juventæ honos; ante hoc domûs pars videntur, mox reipublicæ. De Moribus German. c. 13.

† William of Malmsbury says

This ceremony, however, would perhaps of itself have done little towards creating that intrinsic principle which characterized the genuine chivalry. But in the reign of Charlemagne we find a military distinction, that appears, in fact as well as in name, to have given birth to that institution. Certain feudal tenants, and I suppose also alodial proprietors, were bound to serve on horseback, equipped with the coat of mail. These were called Caballarii, from which the word chevaliers is an obvious corruption.* But he who fought on horseback, and had been invested with peculiar arms in a solemn manner, wanted nothing more to render him a knight. Chivalry therefore may, in a general sense, be referred to the age of Charlemagne. We may however go farther, and observe that these distinctive advantages above ordinary combatants were probably the sources of that remarkable valour and that keen thirst for glory which became the essential attributes of a knightly character. For confidence in our skill and strength is the usual foundation of courage; it is by feeling ourselves able to surmount common dangers, that we become adventurous enough to encounter those of a more extraordinary nature, and to which more glory is attached. The reputation of superior personal

that Alfred conferred knighthood on Athelstan, donatum chlamyde coccineâ, gemmato balteo, ense Saxonico cum vaginâ aureâ. l. ii. c. 6. St. Palaye (Mémoires sur la Chevalerie, p. 2.) mentions other instances; which may also be found in Du Cange's Glossary, v. Arma, and in his 22d dissertation on Joinville.

* Comites et vassalli nostri qui beneficia habere noscuntur, et *caballarii* omnes ad placitum nostrum veniant bene preparati. Capitularia, A.D. 807. in Baluze, t. i. p. 460.

prowess, so difficult to be attained in the course of modern warfare, and so liable to erroneous representations, was always within the reach of the stoutest knight, and was founded on claims, which could be measured with much accuracy. Such is the subordination and mutual dependence in a modern army, that every man must be content to divide his glory with his comrades, his general or his soldiers. But the soul of chivalry was individual honour, coveted in so entire and absolute a perfection, that it must not be shared with an army or a nation. Most of the virtues it inspired were what we may call independent, as opposed to those which are founded upon social relations. The knights-errant of romance perform their best exploits from the love of renown, or from a sort of abstract sense of justice, rather than from any solicitude to promote the happiness of mankind. If these springs of action are less generally beneficial, they are, however, more connected with elevation of character than the systematic prudence of men accustomed to social life. This solitary and independent spirit of chivalry, dwelling, as it were, upon a rock, and disdaining injustice or falsehood from a consciousness of internal dignity, without any calculation of their consequences, is not unlike what we sometimes read of Arabian chiefs or the North-American Indians.* These nations, so

* We must take for this the more favourable representations of the Indian nations. A deteriorating intercourse with Europeans or a race of European extraction has tended to efface those virtues, which possibly were rather exaggerated by earlier writers.

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widely remote from each other, seem to partake of that moral energy, which among European nations, far remote from both of them, was excited by the spirit of chivalry. But the most beautiful picture that was ever pourtrayed of this character is the Achilles of Homer, the representative of chivalry in its most general form, with all its sincerity and unyielding rectitude, all its courtesies and munificence. Calmly indifferent to the cause in which he is engaged, and contemplating with a serious and unshaken look the premature death that awaits him, his heart only beats for glory and friendship. To this sublime character, bating that imaginary completion, by which the creations of the poet, like those of the sculptor, transcend all single works of nature, there were probably many parallels in the ages of chivalry; especially before a set education and the refinements of society had altered a little the natural unadulterated warrior of a ruder period. One illustrious example from this earlier age is the Cid Ruy Diaz, whose history has fortunately been preserved much at length in several chronicles of ancient date, and in one valuable poem; and though I will not say that the Spanish hero is altogether a counterpart of Achilles in gracefulness and urbanity, yet was he inferior to none that ever lived in frankness, honour and magnanimity.*

* Since this passage was written, I have found a parallel drawn by Mr. Sharon Turner, in his valuable History of England, between Achilles and Richard Cœur de Lion; the superior justness of which I readily acknowledge. The real hero does not indeed excite so

In the first stage of chivalry, it was closely connected with the military service of fiefs. The Caballarii in the Capitularies, the Milites of the eleventh and twelfth centuries, were land-holders who followed their lord or sovereign into the field. A certain value of land was termed in England a knight's fee, or, in Normandy, feudum loricæ, fief de haubert, from the coat of mail which it intitled and required the tenant to wear; a military tenure was said to be by service in chivalry. To serve as knights, mounted and equipped, was the common duty of vassals; it implied no personal merit, it gave of itself a claim to no civil privileges. But this knight-service founded upon a feudal obligation is to be carefully distinguished from that superior chivalry, in which all was independent and voluntary. The latter, in fact, could hardly flourish in its full perfection till the military service of feu-

Its connexion with feudal service.

much interest in me as the poetical; but the marks of resemblance are very striking, whether we consider their passions, their talents, their virtues, their vices, or the waste of their heroism.

The two principal persons in the Iliad, if I may digress into the observation, appear to me representatives of the heroic character in its two leading varieties; of the energy which has its sole principle of action within itself, and of that which borrows its impulse from external relations; of the spirit of honour, in short, and of patriotism. As every sentiment of Achilles is independent and self-supported; so those of Hector all bear reference to his kindred and his country. The ardour of the one might have been extinguished for want of nourishment in Thessaly; but that of the other might, we fancy, have never been kindled but for the dangers of Troy. Peace could have brought no delight to the one but from the memory of war; war had no alleviation to the other but from the images of peace. Compare, for example, the two speeches, beginning Il. z. 441. and Il. π. 49.; or rather, compare the two characters throughout the Iliad. So wonderfully were these two great springs of human sympathy, variously interesting according to the diversity of our tempers, first touched by that ancient patriarch,

à quo, ceu fonte perenni,
Vatum Pieriis ora rigantur aquis.

dal tenure began to decline; namely in the thirteenth century. The origin of this personal chivalry I should incline to refer to the ancient usage of voluntary commendation, which I have mentioned in a former chapter. Men commended themselves, that is, did homage and professed attachment to a prince or lord; generally indeed for protection or the hope of reward, but sometimes probably for the sake of distinguishing themselves in his quarrels. When they received pay, which must have been the usual case, they were literally his soldiers, or stipendiary troops. Those who could afford to exert their valour without recompense were like the knights of whom we read in romance, who served a foreign master through love, or thirst of glory, or gratitude. The extreme poverty of the lower nobility, arising from the subdivision of fiefs, and the politic generosity of rich lords, made this connexion as strong as that of territorial dependence. A younger brother leaving the paternal estate, in which he took a slender share, might look to wealth and dignity in the service of a powerful count. Knighthood, which he could not claim as his legal right, became the object of his chief ambition. It raised him in the scale of society, equalling him in dress, in arms, and in title, to the rich land-holders. As it was due to his merit, it did much more than equal him to those who had no pretensions but from wealth; and the territorial knights became by degrees ashamed of assuming the title till they could challenge it by real desert.

This connexion broken.

This class of noble and gallant cavaliers, serving commonly for pay, but on the most honourable footing, became far more numerous through the crusades; a great epoch in the history of European society. In these wars, as all feudal service was out of the question, it was necessary for the richer barons to take into their pay as many knights as they could afford to maintain: speculating, so far as such motives operated, on an influence with the leaders of the expedition, and on a share of plunder, proportioned to the number of their followers. During the period of the crusades, we find the institution of chivalry acquire its full vigour as an order of personal nobility; and its original connexion with feudal tenure, if not altogether effaced, became in a great measure forgotten in the splendour and dignity of the new form which it wore.

Effect of the crusades on chivalry.

The crusades, however, changed in more than one respect the character of chivalry. Before that epoch it appears to have had no particular reference to religion. Ingulfus indeed tells us that the Anglo-Saxons preceded the ceremony of investiture by a confession of their sins, and other pious rites, and they received the order at the hands of a priest, instead of a knight. But this was derided by the Normans as effeminacy, and seems to have proceeded from the extreme devotion of the English before the conquest.* We can hardly per-

Chivalry connected with religion.

* Ingulfus, in Gale. xv Scriptores, t. i. p. 70. William Rufus, however, was knighted by Archbishop Lanfranc, which looks as if the ceremony was not absolutely repugnant to the Norman practice.

ceive indeed why the assumption of arms to be used in butchering mankind should be treated as a religious ceremony. The clergy, to do them justice, constantly opposed the private wars in which the courage of those ages wasted itself; and all bloodshed was subject in strictness to a canonical penance. But the purposes for which men bore arms in a crusade so sanctified their use, that chivalry acquired the character as much of a religious as a military institution. For many centuries, the recovery of the Holy Land was constantly at the heart of a brave and superstitious nobility; and every knight was supposed at his creation to pledge himself, as occasion should arise, to that cause. Meanwhile, the defence of God's law against infidels was his primary and standing duty. A knight, whenever present at mass, held the point of his sword before him while the Gospel was read, to signify his readiness to support it. Writers of the middle ages compare the knightly to the priestly character in an elaborate parallel, and the investiture of the one was supposed analogous to the ordination of the other. The ceremonies upon this occasion were almost wholly religious. The candidate passed nights in prayer among priests in a church; he received the sacraments; he entered into a bath, and was clad with a white robe, in allusion to the presumed purification of his life; his sword was solemnly blessed; every thing in short was contrived to identify his new condition with the defence of religion, or at least of the church.*

* Du Cange, v. Miles, and 22d Dissertation on Joinville, St. Pa-

To this strong tincture of religion which entered into the composition of chivalry from the twelfth century was added another ingredient equally distinguishing. A great respect for the female sex had always been a remarkable characteristic of the Northern nations. The German women were high-spirited and virtuous; qualities, which might be causes or consequences of the veneration with which they were regarded. I am not sure that we could trace very minutely the condition of women for the period between the subversion of the Roman empire and the first crusade; but apparently man did not grossly abuse his superiority; and in point of civil rights, and even as to the inheritance of property, the two sexes were placed perhaps as nearly on a level as the nature of such warlike societies would admit. There seems, however, to have been more roughness in the social intercourse between the sexes than we find in later periods. The spirit of gallantry, which became so animating a principle of chivalry, must be ascribed to the progressive refinement of society during the twelfth and two succeeding centuries. In a rude state of manners, as among the lower people in all ages, woman has not full scope to display those fascinating graces, by which nature has designed to counterbalance the strength and energy of mankind.

laye, Mém. sur la Chevalerie, part ii. A curious original illustration of this, as well as of other chivalrous principles will be found in l'Ordene de Chevalerie, a long metrical romance published in Barbazan's Fabliaux, t. i. p. 59. (edit. 1808.)

Even where those jealous customs that degrade alike the two sexes have not prevailed, her lot is domestic seclusion, nor is she fit to share in the boisterous pastimes or drunken merriment to which the intercourse of an unpolished people is confined. But as a taste for the more elegant enjoyments of wealth arises, a taste which it is always her policy and her delight to nourish, she obtains an ascendancy at first in the lighter hours, and from thence in the serious occupations of life. She chases, or brings into subjection the god of wine, a victory which might seem more ignoble, were it less difficult, and calls in the aid of divinities more propitious to her ambition. The love of becoming ornament is not perhaps to be regarded in the light of vanity; it is rather an instinct which woman has received from nature to give effect to those charms that are her defence; and when commerce began to minister more effectually to the wants of luxury, the rich furs of the North, the gay silks of Asia, the wrought gold of domestic manufacture, illumined the halls of chivalry, and cast, as if by the spell of enchantment, that ineffable grace over beauty which the choice and arrangement of dress is calculated to bestow. Courtesy had always been the proper attribute of knighthood; protection of the weak its legitimate duty; but these were heightened to a pitch of enthusiasm when woman became their object. There was little jealousy shewn in the treatment of that sex, at least in France, the fountain of chivalry; they were present at festivals, at tournaments, and sat

promiscuously in the halls of their castles. The romance of Perceforest (and romances have always been deemed good witnesses as to manners) tells of a feast where eight hundred knights had each of them a lady eating off his plate.* For to eat off the same plate was an usual mark of gallantry or friendship.

Next therefore, or even equal to devotion, stood gallantry among the principles of knighthood. But all comparison between the two was saved by blending them together. The love of God and the ladies was enjoined as a single duty. He who was faithful and true to his mistress was held sure of salvation in the theology of castles though not of cloisters.† Froissart announces that he had undertaken a collection of amorous poetry with the help of God and of love; and Boccace returns thanks to each for their assistance in the Decameron. The laws sometimes united in this general homage to the fair. We will, says James II. of Aragon, that every man, whether knight or no, who shall be in company with a lady, pass safe and unmolested, unless he be guilty of murder.‡ Louis II. duke of Bourbon, insti-

* Y eut huit cens chevaliers séant a table; et si n'y eust celui qui n'eust une dame ou une pucelle a son ecuelle. In Lancelot du Lac, a lady who was troubled with a jealous husband complains that it was a long time since a knight had eat off her plate. Le Grand, t. i. p. 24.

† Le Grand, Fabliaux, t. iii. p. 438. St. Palaye, t. i. p. 41. I quote St. Palaye's Memoirs from the first edition in 1759, which is not the best.

‡ Statuimus, quod omnis homo, sive miles sive alius, qui iverit cum dominâ generosâ, salvus sit atque securus, nisi fuerit homicida. De Marca, Marca Hispanica, p. 1428.

tuting the order of the golden shield, enjoins his knights to honour above all the ladies, and not to permit any one to slander them, "because from them after God comes all the honour that men can acquire."*

The gallantry of those ages, which was very often adulterous, had certainly no right to profane the name of religion; but its union with valour was at least more natural, and became so intimate, that the same word has served to express both qualities. In the French and English wars especially, the knights of each country brought to that serious conflict the spirit of romantic attachment which had been cherished in the hours of peace. They fought at Poitiers or Verneuil as they had fought at tournaments, bearing over their armour scarves and devices, as the livery of their mistresses, and asserting the paramount beauty of her they served, in vaunting challenges towards the enemy. Thus in the middle of a keen skirmish at Cherbourg, the squadrons remained motionless, while one knight challenged to a single combat the most amorous of the adversaries. Such a defiance was soon accepted; and the battle only recommenced, when one of the champions had lost his life for his love.† In the first campaign of Edward's war, some young English knights wore a covering over one eye, vowing, for the sake of their ladies, never to see with both, till they should

* Le Grand, t. i. p. 120. St. Palaye, t. i. p. 13. 134. 221. Fabliaux, Romances, &c. passim.

† St. Palaye, p. 222.

have signalized their prowess in the field.* These extravagancies of chivalry are so common that they form part of its general character, and prove how far a course of action which depends upon the impulses of sentiment may come to deviate from common sense.

It cannot be presumed that this enthusiastic veneration, this devotedness in life and death, were wasted upon ungrateful natures. The goddesses of that idolatry knew too well the value of their worshippers. There has seldom been such adamant about the female heart, as can resist the highest renown for valour and courtesy, united with the steadiest fidelity. "He loved, (says Froissart of Eustace d'Auberthicourt,) and afterwards married Lady Isabel, daughter of the count of Juliers. This lady too loved Lord Eustace for the great exploits in arms which she heard told of him, and she sent him horses and loving letters, which made the said Lord Eustace more bold than before, and he wrought such feats of chivalry, that all in his company were gainers."† It were to be wished that the sympathy of love and valour had always been as honourable. But the morals of chivalry, we cannot deny, were not pure. In the amusing fictions which seem to have been the only popular reading of the middle ages, there reigns a licentious spirit, not of that slighter kind, which is usual in such compositions, but indicating a general dissoluteness in the intercourse of

* Froissart, p. 33. † St. Palaye, p. 268.

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the sexes. This has often been noticed of Boccaccio and the early Italian novelists; but it equally characterizes the tales and romances of France, whether metrical or in prose, and in all the poetry of the Troubadours.* The violation of marriage-vows passes in them for an incontestable privilege of the brave and the fair; and an accomplished knight seems to have enjoyed as undoubted prerogatives, by general consent of opinion, as were claimed by the brilliant courtiers of Louis XV.

But neither that emulous valour which chivalry excited, nor the religion and gallantry which were its animating principles, alloyed as the latter were by the corruption of those ages, could have rendered its institution materially conducive to the moral improvement of society. There were, however, excellencies of a very high class which it equally encouraged. In the books professedly written to lay down the duties of knighthood, they appear to spread over the whole compass of human obligations. But these, like other books of morality, strain their schemes of perfection far beyond the actual practice of mankind. A juster estimate of chivalrous manners is to be deduced from romances. Yet in these, as in all similar fictions, there must be a few ideal touches beyond the simple truth of character; and the picture can

* The romances will speak for themselves; and the character of the Provençal morality may be collected from Millot, Hist. des Troubadours, passim; and from Sismondi, Littérature du Midi, t. i. p. 179. &c. See too St. Palaye, t. ii. p. 62. and 68.

only be interesting, when it ceases to present images of mediocrity or striking imperfection. But they referred their models of fictitious heroism to the existing standard of moral approbation; a rule, which, if it generally falls short of what reason and religion prescribe, is always beyond the average tenor of human conduct. From these, and from history itself, we may infer the tendency of chivalry to elevate and purify the moral feelings. Three virtues may particularly be noticed, as essential, in the estimation of mankind, to the character of a knight; loyalty, courtesy, and munificence.

Virtues deemed essential to chivalry.

Loyalty.

The first of these, in its original sense, may be defined, fidelity to engagements; whether actual promises, or such tacit obligations as bound a vassal to his lord, and a subject to his prince. It was applied also, and in the utmost strictness, to the fidelity of a lover towards the lady he served. Breach of faith, and especially of an express promise, was held a disgrace that no valour could redeem. False, perjured, disloyal, recreant, were the epithets which he must be compelled to endure, who had swerved from a plighted engagement, even towards an enemy. This is one of the the most striking changes produced by chivalry. Treachery, the usual vice of savage, as well as corrupt nations, became infamous during the vigour of that discipline. As personal rather than national feelings actuated its heroes, they never felt that hatred, much less that fear of their enemies, which blind men to the heinousness of ill

faith. In the wars of Edward III., originating in no real animosity, the spirit of honourable, as well as courteous behaviour towards the foe seems to have arrived at its highest point. Though avarice may have been the primary motive of ransoming prisoners, instead of putting them to death, their permission to return home on the word of honour, in order to procure the stipulated sum, an indulgence never refused, could only be founded on experienced confidence in the principles of chivalry.*

Courtesy.

A knight was unfit to remain a member of the order, if he violated his faith; he was ill acquainted with its duties, if he proved wanting in courtesy. This word expressed the most highly refined good-breeding, founded less upon a knowledge of ceremonious politeness, though this was not to be omitted, than on the spontaneous modesty, self-denial, and respect for others, which ought to spring from his heart. Besides the grace which this beautiful virtue threw over the habits of social life, it softened down the natural roughness of war, and gradually introduced that indulgent treatment of prisoners which was almost unknown to antiquity. Instances of this kind are continual in the later period of the middle ages. An Italian writer blames the soldier who wounded Eccelin, the famous tyrant of Padua, after he was taken. He deserved, says he, no praise, but rather the greatest infamy for his

* St Palaye, part ii.

baseness; since it is as vile an act to wound a prisoner, whether noble or otherwise, as to strike a dead body.* Considering the crimes of Eccelin, this sentiment is a remarkable proof of generosity. The behaviour of Edward III. to Eustace de Ribaumont, after the capture of Calais, and that, still more exquisitely beautiful, of the Black Prince to his royal prisoner at Poitiers, are such eminent instances of chivalrous virtue, that I omit to repeat them only because they are so well known. Those great princes too might be imagined to have soared far above the ordinary track of mankind. But in truth, the knights who surrounded them, and imitated their excellencies, were only inferior in opportunities of displaying the same virtue. After the battle of Poitiers, "the English and Gascon knights," says Froissart, "having entertained their prisoners, went home each of them with the knights or squires he had taken, whom he then questioned upon their honour, what ransom they could pay without inconvenience, and easily gave them credit; and it was common for men to say, that they would not straighten any knight or squire, so that he should not live well, and keep up his honour."† Liberality indeed, and disdain of money, might be

Liberality.

* Non laudem meruit, sed summæ potius opprobrium vilitatis; nam idem facinus est putandum captum nobilem vel ignobilem offendere, vel ferire, quàm gladio cædere cadaver. Rolandinus, in Script. Rer. Ital. t. viii. p. 351.

† Froissart, l. i. c. 161. He remarks in another place, that all English and French gentlemen treat their prisoners well; not so the Germans, who put them in fetters, in order to extort more money. c. 136.

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reckoned, as I have said, among the essential virtues of chivalry. All the romances inculcate the duty of scattering their wealth with profusion, especially towards minstrels, pilgrims, and the poorer members of their own order. The last, who were pretty numerous, had a constant right to succour from the opulent; the castle of every lord, who respected the ties of knighthood, was open with more than usual hospitality to the traveller whose armour announced his dignity, though it might also conceal his poverty.*

Justice.

Valour, loyalty, courtesy, munificence, formed collectively the character of an accomplished knight, so far as it was displayed in the ordinary tenor of his life, reflecting these virtues as an unsullied mirror. Yet something more was required for the perfect idea of chivalry, and injoined by its principles; an active sense of justice, an ardent indignation against wrong, a determination of courage to its best end, the prevention or redress of injury. It grew up as a salutary antidote in the midst of poisons, whilst scarce any law but that of the strongest obtained regard, and the rights of territorial property, which are only rights as they conduce to general good, became the means of general oppression. The real condition of society, it has sometimes been thought,

* St. Palaye, part iv. p. 312. 367. &c. Le Grand, Fabliaux, t. i. p. 115. 167. It was the custom in Great Britain, (says the romance of Perceforest, speaking of course in an imaginary history,) that noblemen and ladies placed a helmet on the highest point of their castles, as a sign that all persons of such rank travelling that road might boldly enter their houses like their own. St. Palaye, p. 367.

might suggest stories of knight-errantry, which were wrought up into the popular romances of the middle ages. A baron, abusing the advantage of an inaccessible castle in the fastnesses of the Black Forest or the Alps, to pillage the neighbourhood, and confine travellers in his dungeon, though neither a giant nor a Saracen, was a monster not less formidable, and could perhaps as little be destroyed without the aid of disinterested bravery. Knight-errantry indeed, as a profession, cannot rationally be conceived to have had any existence beyond the precincts of romance. Yet there seems no improbability in supposing, that a knight, journeying through uncivilized regions in his way to the Holy Land, or to the court of a foreign sovereign, might find himself engaged in adventures not very dissimilar to those which are the theme of romance. We cannot indeed expect to find any historical evidence of such incidents.

Resemblance of chivalrous to eastern manners.

The characteristic virtues of chivalry bear so much resemblance to those which eastern writers of the same period extol, that I am a little disposed to suspect Europe of having derived some improvement from imitation of Asia. Though the crusades began in abhorrence of infidels, this sentiment wore off in some degree before their cessation; and the regular intercourse of commerce, sometimes of alliance, between the Christians of Palestine and the Saracens, must have removed part of the prejudice, while experience of their enemy's courage and generosity in war would

with those gallant knights serve to lighten the remainder. The romancers expatiate with pleasure on the merits of Saladin, who actually received the honour of knighthood from Hugh of Tabaria his prisoner. An ancient poem, intitled the Order of Chivalry, is founded upon this story, and contains a circumstantial account of the ceremonies, as well as duties, which the institution required.* One or two other instances of a similar kind bear witness to the veneration in which the name of knight was held among the eastern nations. And certainly, excepting that romantic gallantry towards women, which their customs would not admit, the Mohammedan chieftains were for the most part abundantly qualified to fulfil the duties of European chivalry. Their manners had been polished and courteous, while the western kingdoms were comparatively barbarous.

Evils produced by the spirit of chivalry.

The principles of chivalry were not, I think, naturally productive of many evils. For it is unjust to class those acts of oppression or disorder among the abuses of knighthood, which were committed in spite of its regulations, and were only prevented by them from becoming more extensive. The licence of times so imperfectly civilized could not be expected to yield to institutions, which, like those of religion, fell prodigiously short in their practical result of the reformation which they were designed to work. Man's guilt and frailty have never admitted more than a

* Fabliaux de Barbasan, t. i.

partial corrective. But some bad consequences may be more fairly ascribed to the very nature of chivalry. I have already mentioned the dissoluteness, which almost unavoidably resulted from the prevailing tone of gallantry. And yet we sometimes find, in the writings of those times, a spirit of pure, but exaggerated sentiment; and the most fanciful refinements of passion are mingled by the same poets with the coarsest immorality. An undue thirst for military renown was another fault that chivalry must have nourished; and the love of war, sufficiently pernicious in any shape, was more founded, as I have observed, on personal feelings of honour, and less on public spirit, than in the citizens of free states. A third reproach may be made to the character of knighthood, that it widened the separation between the different classes of society, and confirmed that aristocratical spirit of high birth, by which the large mass of mankind were kept in unjust degradation. Compare the generosity of Edward III. towards Eustace de Ribaumont at the siege of Calais, with the harshness of his conduct towards the citizens. This may be illustrated by a story from Joinville, who was himself imbued with the full spirit of chivalry, and felt like the best and bravest of his age. He is speaking of Henry count of Champagne, who acquired, says he, very deservedly the sirname of Liberal, and adduces the following proof of it. A poor knight implored of him on his knees one day as much money as would serve to marry his two daughters. One Arthault de

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Nogent, a rich burgess, willing to rid the count of this importunity, but rather awkward, we must own, in the turn of his argument, told the petitioner; My lord has already given away so much that he has nothing left. Sir Villain, said Henry, turning round to him, you do not speak truth, in saying that I have nothing left to give, when I have got yourself. Here, Sir Knight, I give you this man, and warrant your possession of him. Then, says Joinville, the poor knight was not at all confounded, but seized hold of the burgess fast by the collar, and told him he should not go till he had ransomed himself. And in the end he was forced to pay a ransom of five hundred pounds. The simple-minded writer who brings this evidence of the count of Champagne's liberality is not at all struck with the facility of a virtue that is exercised at the cost of others.*

Circumstances tending to promote it.

There is perhaps enough in the nature of this institution and its congeniality to the habits of a warlike generation to account for the respect in which it was held throughout Europe. But several collateral circumstances served to invigorate its spirit. Besides the powerful efficacy with which the poetry and romance of the middle ages stimulated those susceptible minds which were alive to no other literature, we may enumerate four distinct causes, tending to the promotion of chivalry.

Regular education

The first of these was the regular scheme of edu-

* Joinville in Collection des Mémoires, t. i. p. 43.

cation, according to which the sons of gentlemen, from the age of seven years, were brought up in the castles of superior lords, where they at once learned the whole discipline of their future profession, and imbibed its emulous and enthusiastic spirit. This was an inestimable advantage to the poorer nobility, who could hardly otherwise have given their children the accomplishments of their station. From seven to fourteen these boys were called pages or varlets; at fourteen they bore the name of esquire. They were instructed in the management of arms, in the art of horsemanship, in exercises of strength and activity. They became accustomed to obedience and courteous demeanour, serving their lord or lady in offices which had not yet become derogatory to honourable birth, and striving to please visitors, and especially ladies, at the ball or banquet. Thus placed in the centre of all that could awaken their imaginations, the creed of chivalrous gallantry, superstition, or honour, must have made indelible impressions. Panting for the glory which neither their strength, nor the established rules permitted them to anticipate, the young scions of chivalry attended their masters to the tournament, and even to the battle, and rivetted with a sigh the armour they were forbidden to wear.*

for knighthood.

It was the constant policy of sovereigns to encourage this institution, which furnished them with faithful supporters, and counteracted the indepen-

Encouragement of princes. Tournaments.

* St. Palaye, part i.

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dent spirit of feudal tenure. Hence they displayed a lavish magnificence in festivals and tournaments, which may be reckoned a second means of keeping up the tone of chivalrous feeling. The kings of France and England held solemn or plenary courts at the great festivals, or at other times, where the name of knight was always a title to admittance; and the masque of chivalry, if I may use the expression, was acted in pageants and ceremonies, fantastical enough in our apprehension, but well calculated for those heated understandings. Here the peacock and the pheasant, birds of high fame in romance, received the homage of all true knights.* The most singular festival of this kind was that celebrated by Philip duke of Burgundy, in 1453. In the midst of the banquet a pageant was introduced, representing the calamitous state of religion in consequence of the recent capture of Constantinople. This was followed by the appearance of a pheasant, which was laid before the duke, and to which the knights present addressed their vows to undertake a crusade, in the following very characteristic preamble: I swear before God my creator in the first place, and the glorious Virgin his mother, and next before the ladies and the pheasant.† Tournaments were a still more powerful incentive to emulation. These may be considered to have arisen about the middle of the eleventh century; for though every martial people have found diver-

* Du Cange, 5me Dissertation sur Joinville. St. Palaye, t. i. p. 87. 118. Le Grand, t. i. p. 14.

† St. Palaye, t. i. p. 191.

sion in representing the image of war, yet the name of tournaments, and the laws that regulated them, cannot be traced any higher.* Every scenic performance of modern times must be tame in comparison of these animating combats. At a tournament, the space inclosed within the lists was surrounded by sovereign princes and their noblest barons, by knights of established renown, and all that rank and beauty had most distinguished among the fair. Covered with steel, and known only by their emblazoned shield, or by the favours of their mistresses, a still prouder bearing, the combatants rushed forward to a strife without enmity, but not without danger. Though their weapons were pointless, and sometimes only of wood, though they were bound by the laws of tournaments to strike only upon the strong armour of the trunk, or, as it was called, between the four limbs, those impetuous conflicts often terminated in wounds and death. The church uttered her excommunications in vain against so wanton an exposure to peril; but it was more easy for her to excite, than to restrain that martial enthusiasm. Victory in a tournament was little less glorious, and perhaps at the moment more exquisitely felt, than in the field; since no battle could assemble such witnesses of valour. "Honour to the sons of the brave" re-

* Godfrey de Preuilly, a French knight, is said by several contemporary writers to have invented tournaments: which must of course be understood in a limited sense. The Germans ascribe them to Henry the Fowler; but this, according to Du Cange, is on no authority. 6me Dissertation sur Joinville.

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sounded amidst the din of martial music from the lips of the minstrels, as the conqueror advanced to receive the prize from his queen or his mistress; while the surrounding multitude acknowledged in his prowess of that day an augury of triumphs that might in more serious contests be blended with those of his country.*

Privileges of knighthood.

Both honorary and substantial privileges belonged to the condition of knighthood, and had of course a material tendency to preserve its credit. A knight was distinguished abroad by his crested helmet, his weighty armour whether mail or plate, bearing his heraldic coat, by his gilded spurs, his horse barded with iron, or clothed in housing of gold; at home, by richer silks, and more costly furs than were permitted to squires, and by the appropriated colour of scarlet. He was addressed by titles of more respect.† Many civil offices, by rule or usage, were confined to his order. But perhaps its chief privilege was to form one distinct class of nobility, extending itself throughout great part of Europe, and almost independent, as to its rights and dignities, of any particular sovereign. Whoever had been legitimately dubbed a knight in one country became, as it were, a citizen of universal chivalry, and might assume most of its privileges in any other. Nor did he require the act of a

* St. Palaye, part ii. and part iii. au commencement. Du Cange, Dissert. 6 and 7: and Glossary, v. Torneamentum. Le Grand, Fabliaux, t. i. p. 184.

† St. Palaye, part iv. Selden's Titles of Honour, p. 606. There was not, however, so much distinction in England as in France.

sovereign to be thus distinguished. It was a fundamental principle that any knight might confer the order; responsible only in his own reputation if he used lightly so high a prerogative. But as all the distinctions of rank might have been confounded, if this right had been without limit, it was an equally fundamental rule, that it could only be exercised in favour of gentlemen.*

* St. Palaye, vol. i. p. 70. has forgotten to make this distinction. It is, however, capable of abundant proof. Gunther, in his poem called Ligurinus, observes of the Milanese republic:

Quoslibet ex humili vulgo, quod Gallia fœdum
Judicat, accingi gladio concedit equestri.

Otho of Frisingen expresses the same in prose. It is said, in the Establishments of St. Louis, that if any one not being a gentleman on the father's side was knighted, the king or baron in whose territory he resides, may hack off his spurs on a dunghill. c. 130. The count de Nevers, having knighted a person who was not noble ex parte paternâ, was fined in the king's court. The king, however, (Philip III.) confirmed the knighthood. Daniel, Hist. de la Milice Françoise, p. 98. Fuit propositum (says a passage quoted by Daniel) contra comitem Flandriensem, quod non poterat, nec debebat facere de villano militem, sine auctoritate regis. ibid. Statuimus, says James I. of Aragon, in 1234, ut nullus faciat militem nisi filium militis. Marca Hispanica, p. 1428. Selden, Titles of Honour, p. 592. produces other evidence to the same effect. And the Emperor Sigismund having conferred knighthood, during his stay at Paris in 1415, on a person incompetent to receive it for want of nobility, the French were indignant at his conduct, as an assumption of sovereignty. Villaret, t. xiii. p. 397. We are told however by Glannone, l. xx. c. 3. that nobility was not in fact required for receiving chivalry at Naples, though it was in France.

The privilege of every knight to associate qualified persons to the order at his pleasure, lasted very long in France; certainly down to the English wars of Charles VII. (Monstrelet, part ii. folio 50.) and, if I am not mistaken, down to the time of Francis I. But in England, where the spirit of independence did not prevail so much among the nobility, it soon ceased. Selden mentions one remarkable instance in a writ of the 29th year of Henry III. summoning tenants in capite to come and receive knighthood from the king, ad recipiendum a nobis arma militaria; and tenants of mesne lords to be knighted by whomsoever they pleased, ad recipiendum arma de quibuscunque voluerint. Titles of Honour, p. 792. But soon after this time it became an established principle of our law, that no subject can confer knighthood except by the king's authority. Thus Edward III. grants to a burgess of *Lyndia* in Guienne

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The privileges annexed to chivalry were of peculiar advantage to the vavassors, or inferior gentry, as they tended to counterbalance the influence which territorial wealth threw into the scale of their feudal suzerains. Knighthood brought these two classes nearly to a level; and it is owing perhaps in no small degree to this institution, that the lower nobility saved themselves, notwithstanding their poverty, from being confounded with the common people.

Connexion of chivalry with military service.

Lastly, the customs of chivalry were maintained by their connexion with military service. After armies, which we may call comparatively regular, had superseded in a great degree the feudal militia, princes were anxious to bid high for the service of knights, the best equipped and bravest warriors of the time, on whose prowess the fate of battles was for a long period justly supposed to depend. War brought into relief the generous virtues of chivalry, and gave lustre to its distinctive privileges. The rank was sought with enthusiastic emulation through heroic atchievements, to which, rather than to mere wealth and station, it was considered to belong. In the wars

(I know not what place this is) the privilege of receiving that rank at the hands of any knight, his want of noble birth notwithstanding. Rymer, t. v. p. 623. It seems, however, that a different law obtained in some places. Twenty-three of the chief inhabitants of Beaucaire, partly knights, partly burgesses, certified in 1298, that the immemorial usage of Beaucaire and of Provence had been, for burgesses to receive knighthood at the hands of noblemen, without the prince's permission. Vaissette, Hist. de Languedoc, t. iii. p. 530. Burgesses, in the great commercial towns, were considered as of a superior class to the roturiers, and possessed a kind of demi-nobility. Charles V. appears to have conceded a similar indulgence to the citizens of Paris. Villaret, t. x. p. 248.

of France and England, by far the most splendid period of this institution, a promotion of knights followed every success, besides the innumerable cases where the same honour rewarded individual bravery.* It may here be mentioned, that an honorary distinction was made between knights bannerets and bachelors.† The former were the richest and best accompanied. No man could properly be a banneret, unless he possessed a certain estate, and could bring a certain number of lances into the field.‡ His distinguishing mark was the square banner, carried by a squire at the point of his lance; while the knight bachelor had only the cornet or pointed pendant. When a banneret was created, the general cut off this pendant to render it square.§ But this distinc-

Knights-bannerets and bachelors.

* St. Palaye, part iii. passim.

† The word bachelor has been commonly derived from bas chevalier; in opposition to banneret. But this, however plausible, is unlikely to be right. We do not find any authority for the expression bas chevaliers, nor any equivalent in Latin, baccalaureus certainly not suggesting that sense; and it is strange that the corruption should obliterate every trace of the original term. Bachelour is a very old word, and is used in early French poetry for a young man, as bachelette is for a girl. So also in Chaucer,

"A yonge Squire,
A lover, and a lusty *bachelor*."

‡ Du Cange, Dissertation 9me sur Joinville. The number of men at arms, whom a banneret ought to command, was properly fifty. But Olivier de la Marche speaks of twenty-five as sufficient; and it appears that, in fact, knights-banneret often did not bring so many.

§ Ibid. Olivier de la Marche (Collection des Mémoires, t. viii. p. 337.) gives a particular example of this; and makes a distinction between the bachelor, created a banneret on account of his estate, and the hereditary banneret, who took a public opportunity of requesting the sovereign to unfold his family banner, which he had before borne wound round his lance. The first was said relever banniere; the second, entrer en banniere. This difference is more fully explained by Daniel, Hist. de la Milice Françoise, p. 116. Chandos's banner was unfolded, not cut, at Navarette. We read sometimes of esquire-bannerets, that is of bannerets by descent, not yet knighted.

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tion, however it elevated the banneret, gave him no claim to military command, except over his own dependents, or men at arms. Chandos was still a knight bachelor when he led part of the prince of Wales's army into Spain. He first raised his banner at the battle of Navarette; and the narration that Froissart gives of the ceremony will illustrate the manners of chivalry, and the character of that admirable hero, the conqueror of Du Guesclin and pride of English chivalry, whose fame with posterity has been a little over-shadowed by his master's laurels.* What seems more extraordinary is, that mere squires had frequently the command over knights. Proofs of this are almost continual in Froissart. But the vast estimation in which men held the dignity of knighthood led them sometimes to defer it for great part of their lives, in hope of signalizing their investiture by some eminent exploit.

Decline of chivalry.

These appear to have been the chief means of nourishing the principles of chivalry among the nobility of Europe. But notwithstanding all encouragement, it underwent the usual destiny of human institutions. St. Palaye, to whom we are indebted for so vivid a picture of ancient manners, ascribes the decline of chivalry in France to the profusion with which the order was lavished under Charles VI., to the establishment of the companies of ordonnance by Charles VII., and to the extension of knightly honours to lawyers,

* Froissart, part i. c. 241.

and other men of civil occupations by Francis I.* But the real principle of decay was something different from these three subordinate circumstances, unless so far as it may bear some relation to the second. It was the invention of gunpowder that eventually overthrew chivalry. From the time when the use of fire-arms became tolerably perfect, the weapons of former warfare lost their efficacy, and physical force was reduced to a very subordinate place in the acomplishments of a soldier. The advantages of a disciplined infantry became more sensible; and the lancers, who continued till almost the end of the sixteenth century to charge in a long line, felt the punishment of their presumption and indiscipline. Even in the wars of Edward III., the disadvantageous tactics of chivalry must have been perceptible; but the military art had not been sufficiently studied to overcome the prejudices of men eager for individual distinction. Tournaments became less frequent; and, after the fatal accident of Henry II., were entirely discontinued in France. Notwithstanding the convulsions of the religious wars, the sixteenth century was more tranquil than any that had preceded; and thus a large part of the nobility passed their lives in pacific habits, and, if they assumed the honours of chivalry, forgot their natural connexion with military prowess. This is far more applicable to England, where, except from the reign of Edward III. to that of

* Mém. sur la Chevalerie, part v.

Henry VI., chivalry, as a military institution, seems not to have found a very congenial soil;* but under the peaceful reigns of the Tudor dynasty, nothing remained to preserve it from extinction. To these circumstances, immediately affecting the military condition of nations, we must add the progress of reason and literature, which made ignorance discreditable even in a soldier, and exposed the follies of romance to a ridicule, which they were very ill calculated to endure.

The spirit of chivalry left behind it a more valuable successor. The character of knight gradually subsided in that of gentleman; and the one distinguishes European society in the sixteenth and seventeenth centuries, as much as the other did in the preceding ages. A jealous sense of honour, less romantic, but equally elevated, a ceremonious gallantry and politeness, a strictness in devotional observances, an high pride of birth,

* The prerogative exercised by the kings of England of compelling men sufficiently qualified in point of estate to take on them the honour of knighthood was inconsistent with the true spirit of chivalry. This began, according to Lord Lyttleton, under Henry III. Hist. of Henry II. vol. ii. p. 238. Independently of this, several causes tended to render England less under the influence of chivalrous principles, than France or Germany; such as, her comparatively peaceful state, the smaller share she took in the crusades, her inferiority in romances of knight-errantry, but above all, the democratical character of her laws and government. Still this is only to be understood relatively to the two other countries above-named; for chivalry was always in high repute among us, nor did any nation produce more admirable specimens of its excellencies.

I am not minutely acquainted with the state of chivalry in Spain, where it seems to have flourished considerably. Italy, except in Naples, and perhaps Piedmont, displayed little of its spirit; which neither suited the free republics of the twelfth and thirteenth, nor the jealous tyrannies of the following centuries. Yet even here we find enough to furnish Muratori with materials for his 53d dissertation.

and feeling of independence upon any sovereign for the dignity it gave, a sympathy for martial honour, though more subdued by civil habits, are the lineaments which prove an indisputable descent. The cavaliers of Charles I. were genuine successors of Edward's knights; and the resemblance is much more striking, if we ascend to the civil wars of the League. Time has effaced much also of this gentlemanly, as it did before of the chivalrous character. From the latter part of the seventeenth century, its vigour and purity have undergone a tacit decay, and yielded, perhaps in every country, to increasing commercial wealth, more diffused instruction, the spirit of general liberty in some, and of servile obsequiousness in others, the modes of life in great cities, and the levelling customs of social intercourse.*

Literature.

It is now time to pass to a very different subject. The third head under which I classed the improvements of society during the four last centuries of the middle ages, was that of literature. But I must apprize the reader not to expect any general view of literary history, even in the most

* The well-known Memoirs of St. Palaye are the best repository of interesting and illustrative facts respecting chivalry. Possibly he may have relied a little too much on romances, whose pictures will naturally be over-charged. Froissart himself has somewhat of this partial tendency, and the manners of chivalrous times do not make so fair an appearance in Monstrelet. In the Memoirs of la Tremouille, (Collect. des Mém. t. xiv. p. 169.) we have perhaps the earliest delineation from the life of those severe and stately virtues in high-born ladies, of which our own country furnished so many examples in the sixteenth and seventeenth centuries, and which were derived from the influence of chivalrous principles. And those of Bayard in the same collection, (t. xiv. and xv.) are a beautiful exhibition of the best effects of that discipline.

abbreviated manner. Such an epitome would not only be necessarily superficial, but foreign in many of its details, to the purposes of this chapter, which, attempting to develope the circumstances that gave a new complexion to society, considers literature only so far as it exercised a general and powerful influence. The private researches, therefore, of a single scholar, unproductive of any material effect in his generation, ought not to arrest us, nor indeed would a series of biographical notices, into which literary history is apt to fall, be very instructive to a philosophical inquirer. But I have still a more decisive reason against taking a large range of literary history into the compass of this work, founded on the many contributions which have been made within the last forty years to that department, some of them even since the commencement of my own labour.* These have diffused so general an acquaintance with the literature of the middle ages, that I must, in treating the subject, either compile secondary information from well known books, or enter upon a vast field of reading, with little hope of improving upon what has been already said, or even acquiring credit for original research. I shall therefore confine myself to four points, the study

* Four very recent publications (not to mention that of Buhle on modern philosophy) enter much at large into the middle literature; those of M. Ginguené, and M. Sismondi, the History of England by Mr. Sharon Turner, and the Literary History of the Middle Ages by Mr. Berington. All of these contain more or less useful information and judicious remarks; but that of Ginguené is among the most learned and important works of this century. I have no hesitation to prefer it, as far as its subjects extend, to Tiraboschi.

of civil law; the institution of universities; the application of modern languages to literature, and especially to poetry; and the revival of ancient learning.

Civil law.

The Roman law had been nominally preserved ever since the destruction of the empire; and a great portion of the inhabitants of France and Spain, as well as Italy, were governed by its provisions. But this was a mere compilation from the Theodosian code; which itself contained only the more recent laws promulgated after the establishment of Christianity, with some fragments from earlier collections. It was made by order of Alaric king of the Visigoths about the year 500, and is frequently confounded with the Theodosian code by writers of the dark ages.* The code of Justinian, reduced into system after the separation of the two former countries from the Greek empire, never obtained any authority in them; nor was it received in the part of Italy subject to the Lombards. But that this body of laws was absolutely unknown in the West during any period seems to have been too hastily supposed. Some of the more eminent ecclesiastics, as Hincmar and Ivon of Chartres, occasionally refer to it, and bear witness to the regard which the church of Rome (I mean in its particular sense) had uniformly paid to its decisions.†

The revival of the study of jurisprudence, as

* Heineccius, Hist. Juris German. c. i. s. 15.

† Giannone, l. iv. c. 6. Selden, ad Fletam, p. 1071.

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derived from the laws of Justinian, has generally been ascribed to the discovery made of a copy of the Pandects at Amalfi, in 1135, when that city was taken by the Pisans. This fact, though not improbable, seems not to rest upon sufficient evidence.* But its truth is the less material, as it appears to be unequivocally proved that the study of Justinian's system had recommenced before that æra. Early in the twelfth century, a professor named Irnerius† opened a school of civil law at Bologna, where he commented, if not on the Pandects, yet on the other books, the Institutes and Code, which were sufficient to teach the principles and inspire the love of that comprehensive jurisprudence. The study of law, having thus revived, made a surprizing progress; within fifty years Lombardy was full of lawyers, on whom Frederic Barbarossa and Alexander III., so hostile in every other respect, conspired to shower honours and privileges. The schools of Bologna were pre-eminent throughout this century for legal learning. There seem also to have been seminaries at Modena and Mantua; nor was any considerable city without distinguished civilians. In the next age they became still more numerous, and their professors more conspicuous; new universities arose

* Tiraboschi, t. iii. p. 359. Ginguené Hist. Litt. de l'Italie, t. i. p. 155.

† Irnerius is sometimes called Guarnerius, sometimes Warnerius: the German W is changed into Gu by the Italians, and occasionally omitted, especially in latinizing, for the sake of euphony or purity.

at Naples, Padua, and other places, where the Roman law was the object of peculiar regard.*

There is apparently great justice in the opinion of Tiraboschi, that by acquiring internal freedom and the right of determining controversies by magistrates of their own election, the Italian cities were led to require a more extensive and accurate code of written laws, than they had hitherto possessed. These municipal judges were chosen from among the citizens, and the succession to offices was usually so rapid, that almost every freeman might expect in his turn to partake in the public government, and consequently in the administration of justice. The latter had always indeed been exercised in the sight of the people by the count and his assessors under the Lombard and Carlovingian sovereigns; but the laws were rude, the proceedings tumultuary, and the decisions perverted by violence. The spirit of liberty begot a stronger sense of right; and right, it was soon perceived, could only be secured by a common standard. Magistrates, holding temporary offices, and little elevated, in those simple times, above the citizens among whom they were to return, could only satisfy the suitors, and those who surrounded their tribunal, by proving the conformity of their sentences to acknowledged authorities. And the practice of alledging reasons in giving judgement would of itself introduce some uniformity of decision, and some adherence to great rules of justice

* Tiraboschi, t. iv. p. 38.; t. v. p. 55.

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in the most arbitrary tribunals; while, on the other hand, those of a free country lose part of their title to respect, and of their tendency to maintain right, whenever, either in civil or criminal questions, the mere sentence of a judge is pronounced without explanation of its motives.

The fame of this renovated jurisprudence spread very rapidly from Italy over other parts of Europe. Students flocked from all parts to Bologna; and some eminent masters of that school repeated its lessons in distant countries.* One of these, Placentinus, explained the digest at Montpelier before the end of the twelfth century; and the collection of Justinian soon came to supersede the Theodosian code in the dominions of Toulouse.* Its study continued to flourish in the universities of both these cities; and hence the Roman law, as it is exhibited in the system of Justinian, became the rule of all tribunals in the southern provinces of France. Its authority in Spain is equally great, or at least is only disputed by that of the canonists;† and it forms the acknowledged basis of decision in all the Germanic tribunals, sparingly modified by the ancient feudal customaries, which the jurists of the empire reduce within narrow bounds.‡ In the northern parts of France, where the legal standard was sought in local customs, the civil law met naturally with less regard. But

* Tiraboschi, t. v. Vaissette, Hist. de Languedoc, t. ii. p. 517.; t. iii. p. 527.; t. iv. p. 504.

† Duck, De Usu Juris civilis, l. ii. c. 6.

‡ Idem, l. ii. 2.

the code of St. Louis borrows from that treasury many of its provisions, and it was constantly cited in pleadings before the parliament of Paris, either as obligatory by way of authority, or at least as written wisdom, to which great deference was shewn.* Yet its study was long prohibited in the university of Paris, from a disposition of the popes to establish exclusively their decretals, though the prohibition was silently disregarded.†

Its introduction into England.

As early as the reign of Stephen, Vacarius, a lawyer of Bologna, taught at Oxford with great success; but the students of scholastic theology opposed themselves, from some unexplained reason, to this new jurisprudence, and his lectures were interdicted.‡ About the time of Henry III. and Edward I., the civil law acquired some credit in England; but a system entirely incompatible with it had established itself in our courts of justice; and the Roman jurisprudence was not only soon rejected, but became obnoxious.§

* Duck, l. ii. c. 5. s. 30, 31. Fleury, Hist. du Droit François, p. 74. (prefixed to Argou, Institutions au Droit François. edit. 1787.) says, that it was a great question among lawyers, and still undecided (i. e. in 1674) whether the Roman law was the common law in the pays coutumiers, as to those points wherein their local customs were silent. And, if I understand Denisart, (Dictionnaire des Décisions, art. Droit-écrit,) the affirmative prevailed. However, it is plain by the Causes Célèbres, that appeal was continually made to the principles of the civil law in the *factums* of Parisian advocates.

† Crevier, Hist. de l'Université de Paris, t. i. p. 316.; t. ii. p. 275.

‡ Johan. Salisburiensis, apud Selden ad Fletam, p. 1082.

§ Selden, ubi supra, p. 1095—1105. This passage is worthy of attention. Yet, notwithstanding Selden's authority, I am not satisfied that he has not extenuated the effect of Bracton's predilection for the maxims of Roman jurisprudence. No early lawyer has contributed so much to form our own system as Bracton; and if his definitions and rules are sometimes

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Every where, however, the clergy combined its study with that of their own canons; it was a maxim that every canonist must be a civilian, and that no one could be a good civilian unless he were also a canonist. In all universities, degrees are granted in both laws conjointly; and in all courts of ecclesiastical jurisdiction, the authority of Justinian is cited, when that of Gregory or Clement is wanting.*

The elder civilians little regarded.

I should earn little gratitude for my obscure diligence, were I to dwell on the forgotten teachers of a science, that is likely soon to be forgotten. These elder professors of Roman jurisprudence are infected, as we are told, with the faults and ignorance of their time; failing in the exposition of ancient laws through incorrectness of manuscripts and want of subsidiary learning, or perverting their sense through the verbal subtleties of scholastic philosophy. It appears that, even a hundred years since, neither Azzo and Accursius, the principal civilians of the thirteenth century, nor Bartolus and Baldus, the more conspicuous luminaries of the next age, nor the later writings of Accolti, Fulgosius, and Panormitanus, were greatly regarded as authorities; unless it were in Spain, where improvement is always

borrowed from the civilians, as all admit, our common law may have indirectly received greater modification from that influence, than its professors were ready to acknowledge, or even than they knew. A full view of this subject is still, I think, a desideratum in the history of English law, which it would illustrate in a very interesting manner.

* Duck, De Usu Juris civilis, l. i. c. 87.

odious, and the name of Bartolus inspired absolute deference.* In the sixteenth century, Alciatus, and the greater Cujacius, became as it were the founders of a new and more enlightened academy of civil law, from which the later jurists derived their lessons. But their names, or at least their writings, are rapidly passing to the gulph that absorbed their predecessors. The stream of literature, that has so remarkably altered its channel within the last century, has left no region more deserted than those of the civil and canon law. Except among the immediate disciples of the papal court, or perhaps in Spain, no man, I suppose, throughout Europe will ever again undertake the study of the one; and the new legal systems, which the moral and political revolutions of this age have produced and are likely to diffuse, will leave little influence or importance to the other. Yet, as their character, so their fate will not be altogether similar. The canon law, fabricated only for an usurpation that can never be restored, will become absolutely useless, as if it had never existed; like a spacious city in the wilderness, though not so splendid and interesting as Palmyra. But the code of Justinian, stripped of its impurer alloy, and of the tedious glosses of its commentators, will form the basis of other systems, and, mingling, as we may hope, with the new institutions of philosophical legislators, continue to influence the social relations of mankind,

And the science itself on the decline.

* Gravina, Origines Juris civilis, p. 196.

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long after its direct authority shall have abrogated. The ruins of ancient Rome supplied the materials of a new city; and the fragments of her law, which have already been wrought into the recent codes of France and Prussia, will probably, under other names, guide far distant generations by the sagacity of Modestinus and Ulpian.*

Public schools established by Charlemagne.

The establishment of public schools in France is owing to Charlemagne. At his accession, we are assured that no means of education existed in his dominions;† and in order to restore in some degree the spirit of letters, he was compelled to invite strangers from countries where learning was not so thoroughly extinguished. Alcuin of England, Clement of Ireland, Theodulf of Germany, were the true Paladins who repaired to his court. With the help of these he revived a few sparks of diligence, and established schools in different cities of his empire, nor was he ashamed to be the disciple of that in his own palace under

* Those, if any such there be, who feel some curiosity about the civilians of the middle ages, will find a concise and elegant account in Gravina, De Origine Juris civilis; p. 166—206. (Lips. 1708.) Tiraboschi contains perhaps more information; but his prolixity, on a theme so unimportant, is very wearisome. Of what use could he think it to discuss the dates of all transactions in the lives of Bartolus and Baldus (to say nothing of obscurer names) when nobody was left to care who Baldus and Bartolus were? Besides this fault, it is evident that Tiraboschi knew very little of law, and had not read the civilians of whom he treats; whereas Gravina discusses their merits not only with legal knowledge, but with an acuteness of criticism, which, to say the truth, Tiraboschi never shews except on a date or a name.

† Ante ipsum dominum Carolum regem in Gallia nullum fuit studium liberalium artium. Monachus Engolismensis, apud Launoy, De Scholis per occidentem instauratis, p. 5. See too Histoire Littéraire de la France, t. iv. p. 1.

the care of Alcuin.* His two next successors, Louis the Debonair, and Charles the Bald, were also encouragers of letters; and the schools of Lyons, Fulda, Corvey, Rheims, and some other cities might be said to flourish in the ninth century.† In these were taught the trivium and quadrivium, a long established division of sciences; the first comprehending grammar, or what we now call philology, logic and rhetoric; the second music, arithmetic, geometry and astronomy.‡ But in those ages scarcely any body mastered the latter four; and to be perfect in the three former was exceedingly rare. All those studies, however, were referred to theology, and that in the narrowest manner; music, for example, being reduced to church chanting, and astronomy to the calculation of Easter.§ Alcuin forbad the Latin poets to be read;‖ and this discouragement of secular learning was very general; though some, as for instance Raban, permitted a slight tincture of it, as subsidiary to religious instruction.¶

University of Paris.

About the latter part of the eleventh century, a greater ardour for intellectual pursuits began to

* id. ibid. There was a sort of literary club among them, where the members assumed ancient names. Charlemagne was called David; Alcuin, Horace; another Demetas; &c.

† Hist. Littéraire, p. 217. &c.

‡ This division of the sciences is ascribed to St. Augustin; and was certainly established early in the sixth century. Brucker, Historia Critica Philosophiæ, t. iii. p. 597.

§ Schmidt, Hist. des Allemands, t. ii. p. 126.

‖ Crevier, Hist. de l'Université de Paris, t. i. p. 28.

¶ Brucker, t. iii. p. 612. Raban Maurus was chief of the cathedral school at Fulda, in the ninth century.

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shew itself in Europe, which in the twelfth broke out into a flame. This was manifested in the numbers who repaired to the public academies, or schools of philosophy. None of these grew so early into reputation as that of Paris. This cannot indeed, as has been vainly pretended, trace its pedigree to Charlemagne. The first who is said to have read lectures at Paris was Remigius of Auxerre, about the year 900.* For the two next centuries the history of this school is very obscure; and it would be hard to prove an unbroken continuity, or at least a dependence and connexion of its professors. In the year 1100, we find William of Champeaux teaching logic, and apparently some higher parts of philosophy, with much credit. But this preceptor was eclipsed by his disciple, afterwards his rival and adversary,

Abelard.

Peter Abelard, to whose brilliant and hardy genius the university of Paris appears to be indebted for its rapid advancement. Abelard was almost the first who awakened mankind in the ages of darkness to a sympathy with intellectual excellence. His bold theories, not the less attractive perhaps for treading upon the bounds of heresy, his imprudent vanity, that scorned the regularly acquired reputation of older men, allured a multitude of disciples, who would never have listened to an ordinary teacher. It is said, that twenty cardinals and fifty bishops had been among his

* Crevier, p. 66.

hearers.* Even in the wilderness, where he had erected the monastery of Paraclete, he was surrounded by enthusiastic admirers, relinquishing the luxuries, if so they might be called, of Paris, for the coarse living and imperfect accommodation which that retirement could afford.† But the whole of Abelard's life was the shipwreck of genius; and of genius, both the source of his own calamities, and unserviceable to posterity. There are few lives of literary men more interesting, or more diversified by success and adversity, by glory and humiliation, by the admiration of mankind and the persecution of enemies; nor from which, I may add, more impressive lessons of moral prudence may be derived. One of Abelard's pupils was Peter Lombard, afterwards archbishop of Paris, and author of a work, called the Book of Sentences, which obtained the highest authority among the scholastic disputants. The resort of students to Paris became continually greater; they appear, before the year 1169, to have been divided into nations;‡ and probably they had an elected rector and voluntary rules of discipline about the same time. This, however, is not decisively proved; but in the last year of the twelfth cen-

* Crevier, p. 171. Brucker, p. 677. Tiraboschi, t. iii. p. 275.

† Brucker, p. 750.

‡ The faculty of arts in the university of Paris was divided into four nations; those of France, Picardy, Normandy, and England. These had distinct suffrages in the affairs of the university, and consequently, when united, out-numbered the three higher faculties of theology, law, and medicine. In 1169, Henry II. of England offers to refer his dispute with Becket to the provinces of the school of Paris.

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tury, they obtained their earliest charter from Philip Augustus.*

University of Oxford.

The opinion which ascribes the foundation of the university of Oxford to Alfred, if it cannot be maintained as a truth, contains no intrinsic marks of error. Ingulfus, abbot of Croyland, in the earliest authentic passage that can be adduced to this point,† declares that he was sent from Westminster to the school at Oxford, where he learned Aristotle, and the two first books of Tully's rhetoric.‡ Since a school for dialectics and rhetoric subsisted at Oxford, a town of but middling size, and not the seat of a bishop, we are naturally led to refer its foundation to one of our kings; and none who had reigned after Alfred appears likely to have manifested such zeal for learning. However, it is evident that the school of Oxford was frequented under Edward the Confessor. There follows an interval of above a century,

* Crevier, t. i. p. 279. The first statute regulating the discipline of the university was given by Robert de Courçon, legate of Honorius III., in 1215. id. p. 296.

† No one probably would chuse to rely on a passage found in one manuscript of Asserius, which has all appearance of an interpolation. It is evident from an anecdote in Wood's History of Oxford, vol. i. p. 23. (Gutch's edition) that Camden did not believe in the authenticity of this passage, though he thought proper to insert it in the Britannia.

‡ The mention of Aristotle at so early a period might seem to throw some suspicion on this passage. But it is impossible to detach it from the context; and the works of Aristotle intended by Ingulfus were translations of parts of his logic by Boethius and Victorin. Brucker, p. 678. A passage indeed in Peter of Blois's continuation of Ingulfus, where the study of Averroes is said to have taken place at *Cambridge* some years before he was born, is of a different complexion, and must of course be rejected as spurious. In the Gesta Comitum Andegavensium, Fulk, count of Anjou, who lived about 920, is said to have been skilled Aristotelicis et Ciceronianis ratiocinationibus.

during which, we have, I believe, no contemporary evidence of its continuance. But in the reign of Stephen, Vacarius read lectures there upon civil law; and it is reasonable to suppose that a foreigner would not have chosen that city, if he had not found a seminary of learning already established. It was probably inconsiderable, and might have been interrupted during some part of the preceding century.* In the reign of Henry II., or at least of Richard I:, Oxford became a very flourishing university, and in 1201, according to Wood, contained 3000 scholars.† The earliest charters were granted by John.

University of Bologna.

If it were necessary to construe the word university in the strict sense of a legal incorporation, Bologna might lay claim to a higher antiquity than either Paris or Oxford. There are a few vestiges of studies pursued in that city even in the eleventh century;‡ but early in the next, the revival of the Roman jurisprudence, as has been already noticed, brought a throng of scholars round the chairs of its professors. Frederic Barbarossa in 1158, by his authentic or rescript intitled Habita, took these under his protection, and

* It may be remarked, that John of Salisbury, who wrote in the first years of Henry II.'s reign, since his Policraticus is dedicated to Becket, before he became archbishop, makes no mention of Oxford, which he would probably have done, if it had been an eminent seat of learnnig at that time.

† Wood's Hist. and Antiquities of Oxford, p. 177. The Benedictins of St. Maur say, that there was an eminent school of canon law at Oxford about the end of the twelfth century, to which many students repaired from Paris. Hist. Litt. de la France, t. ix. p. 216.

‡ Tiraboschi, t. iii. p. 259. and alibi. Muratori, Dissert. 43.

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permitted them to be tried in civil suits by their own judges. This exemption from the ordinary tribunals, and even from those of the church, was naturally coveted by other academies; it was granted to the university of Paris by its earliest charter from Philip Augustus, and to Oxford by John. From this time the golden age of universities commenced; and it is hard to say, whether they were favoured most by their sovereigns, or by the see of Rome. Their history indeed is full of struggles with the municipal authorities, and with the bishops of their several cities; wherein they were sometimes the aggressors, and generally the conquerors. From all parts of Europe students resorted to these renowned seats of learning with an eagerness for instruction which may astonish those who reflect how little of what we now deem useful could be imparted. At Oxford, under Henry III., it is said that there were 30,000 scholars; an exaggeration which seems to imply that the real number was very great.* A respectable contemporary writer asserts that there were full 10,000 at Bologna about the same time.† I have

Encouragement given to universities.

* "But among these," says Anthony Wood, "a company of varlets, who pretended to be scholars, shuffled themselves in, and did act much villainy in the university by thieving, whoring, quarrelling, &c. They lived under no discipline, neither had they tutors; but only for fashion sake would sometimes thrust themselves into the schools at ordinary lectures, and when they went to perform any mischief, then would they be accounted scholars, that so they might free themselves from the jurisdiction of the burghers." p. 206. If we allow three varlets to one scholar, the university will still have been very fully frequented by the latter.

† Tiraboschi, t. iv. p. 47. Azarius, about the middle of the fourteenth century, says, the number was about 13,000 in his time. Muratori, Script. Rer. Ital. t. xvi. p. 325.

not observed any numerical statement as to Paris during this age; but there can be no doubt that it was more frequented than any other. At the death of Charles VII. in 1453, it contained 25,000 students.* In the thirteenth century, other universities sprang up in different countries; Padua and Naples under the patronage of Frederic II., a zealous and useful friend to letters;† Toulouse and Montpelier, Cambridge and Salamanca.‡ Orleans, which had long been distinguished as a school of civil law, received the privileges of incorporation early in the fourteenth century; and Angers before the expiration of the same age.§ Prague, the earliest, and most eminent of German universities, was founded in 1350; a secession from thence of Saxon students, in consequence of the nationality of the Bohemians and the Hussite schism, gave rise to that of Leipsic.‖ The fifteenth century produced se-

* Villaret, Hist. de France, t. xvi. p. 341. This may perhaps require to be taken with allowance. But Paris owes a great part of its buildings on the southern bank of the Seine to the university. The students are said to have been about 12,000 before before 1480. Crevier, t. iv. p. 410.

† Tiraboschi, t. iv. p. 43. and 46.

‡ The earliest authentic mention of Cambridge as a place of learning, if I mistake not, is in Matthew Paris, who informs us, that in 1209, John having caused three clerks of Oxford to be hanged on suspicion of murder, the whole body of scholars left that city, and emigrated some to Cambridge, some to Reading, in order to carry on their studies. (p. 191. edit. 1684.) But it may be objectured with some probability, that they were led to a town so distant as Cambridge by the previous establishment of academical instruction in that place. The incorporation of Cambridge is in 1231, (15 Hen. III.) so that there is no great difference in the legal antiquity of our two universities.

§ Crevier, Hist. de l'Université de Paris, t. ii. p. 216.; t. iii. p. 140.

‖ Pfeffel, Abrégé Chronologique de l'Hist. de l'Allemagne, p. 550. 607.

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veral new academical foundations in France and Spain.

A large proportion of scholars, in most of those institutions, were drawn by the love of science from foreign countries. The chief universities had their own particular departments of excellence. Paris was unrivalled for scholastic theology; Bologna and Orleans, and afterwards Bourges, for jurisprudence; Montpelier for medicine. Though national prejudices, as in the case of Prague, sometimes interfered with this free resort of foreigners to places of education, it was in general a wise policy of government, as well as of the universities themselves, to encourage it. The thirty-fifth article of the peace of Bretigni provides for the restoration of former privileges to students respectively in the French and English universities.* Various letters patent will be found in Rymer's collection, securing to Scottish as well as French natives a safe passage to their place of education. The English nation, including, however, the Flemings and Germans,† had a separate vote in the faculty of Arts at Paris. But foreign students were not, I believe, so numerous in the English academies.

If endowments and privileges are the means of quickening a zeal for letters, they were liberally bestowed in the three last of the middle ages. Crevier enumerates fifteen colleges founded in the university of Paris during the thirteenth century,

* Rymer, t. vi. p. 292. † Crevier, t. ii. p. 398.

besides one or two of a still earlier date. Two only, or at most three, existed in that age at Oxford, and but one at Cambridge. In the next two centuries these universities could boast, as every one knows, of many splendid foundations; though much exceeded in number by those of Paris. Considered as ecclesiastical institutions, it is not surprizing that the universities obtained, according to the spirit of their age, an exclusive cognizance of civil or criminal suits affecting their members. This jurisdiction was, however, local as well as personal, and in reality encroached on the regular police of their cities. At Paris the privilege turned to a flagrant abuse, and gave rise to many scandalous contentions.* Still more valuable advantages were those relating to ecclesiastical preferments, of which a large proportion was reserved in France to academical graduates. Something of the same sort, though less extensive, may still be traced in the rules affecting plurality of benefices in our English church.

Causes of their celebrity.

This remarkable and almost sudden transition from a total indifference to all intellectual pursuits cannot be ascribed perhaps to any general causes. The restoration of the civil, and the formation of the canon law, were indeed eminently conducive to it, and a large proportion of scholars in most universities confined themselves to jurisprudence. But the chief attraction to the studious was the new scholastic philosophy. The love of conten-

Scholastic philosophy.

* Crevier and Villaret passim.

tion, especially with such arms as the art of dialectics supplies to an acute understanding, is natural enough to mankind. That of speculating upon the mysterious questions of metaphysics and theology is not less so. These disputes and speculations, however, appear to have excited little interest, till, after the middle of the eleventh century, Roscelin, a professor of logic, revived the old question of the Grecian schools respecting universal ideas, the reality of which he denied. This kindled a spirit of metaphysical discussion, which Lanfranc and Anselm, successively archbishops of Canterbury, kept alive; and in the next century Abelard and Peter Lombard, especially the latter, completed the scholastic system of philosophizing. The logic of Aristotle seems to have been partly known in the eleventh century, although that of Augustin was perhaps in higher estimation;* in the twelfth it obtained more decisive influence. His metaphysics, to which the logic might be considered as preparatory, were introduced through translations from the Arabic, and perhaps also from the Greek, early in the ensuing century.† This work, con-

* Brucker, Hist. Crit. Philosophiæ, t. iii. p. 678.

† id. ibid. Tiraboschi conceives that the translations of Aristotle made by command of Frederic II. were directly from the Greek, t. iv. p. 145.; and censures Brucker for the contrary opinion. Buhle, however, (Hist. de la Philosophie Moderne, t. i. p. 696.) appears to agree with Brucker. It is almost certain, that versions were made from the Arabic Aristotle; which itself was not immediately taken from the Greek, but from a Syriac medium. Ginguené, Hist. Litt. de l'Italie, t. i. p. 212. (on the authority of M. Langlés.)

It was not only a knowledge of Aristotle that the scholastics of

demned at first by the decrees of popes and councils, on account of its supposed tendency to atheism, acquired by degrees an influence, to which even popes and councils were obliged to yield. The Mendicant Friars, established throughout Europe in the thirteenth century, greatly contributed to promote the Aristotelian philosophy; and its final reception into the orthodox system of the church may chiefly be ascribed to Thomas Aquinas, the boast of the Dominican order, and certainly the most distinguished metaphysician of the middle ages. His authority silenced all scruples as to that of Aristotle, and the two philosophers were treated with equally implicit deference by the later schoolmen.*

Europe derived from the Arabic language. His writings had produced in the flourishing Mohammedan kingdoms a vast number of commentators and of metaphysicians trained in the same school. Of these Averroes, a native of Cordova, who died early in the thirteenth century, was the most eminent. It would be curious to examine more minutely than has hitherto been done the original writings of these famous men, which no doubt have suffered in translation. A passage from Al Gazel, which Mr. Turner has rendered from the Latin, with all the disadvantage of a double remove from the author's words, appears to state the argument in favour of that class of *nominalists*, called *conceptualists*, (the only *realists* who remain in the present age,) with more clearness and precision than any thing I have seen from the schoolmen. Al Gazel died in 1126, and consequently might have suggested this theory to Abelard, which however is not probable. Turner's Hist. of Engl. vol. i. p. 513.

* Brucker, Hist. Crit. Philosophiæ, t. iii. I have found no better guide than Brucker. But he confesses himself not to have read the original writings of the scholastics; an admission which every reader will perceive to be quite necessary. Consequently, he gives us rather a verbose declamation against their philosophy, than any clear view of its character. Of the valuable works lately published in Germany on the history of philosophy, I have only seen that of Buhle, which did not fall into my hands till I had nearly written these pages. Tiedeman and Tenneman are, I believe, still untranslated.

This scholastic philosophy, so famous for several ages, has since passed away and been forgotten. The history of literature, like that of empire, is full of revolutions. Our public libraries are cemeteries of departed reputation; and the dust accumulating upon their untouched volumes speaks as forcibly as the grass that waves over the ruins of Babylon. Few, very few, for a hundred years past, have broken the repose of the immense works of the schoolmen. None perhaps in our own country have acquainted themselves particularly with their contents. Leibnitz, however, expressed a wish that some one conversant with modern philosophy would undertake to extract the scattered particles of gold which may be hidden in their abandoned mines. This wish has been at length partially fulfilled by three or four of those industrious students and keen metaphysicians, who do honour to modern Germany. But most of their works are unknown to me except by repute; and as they all appear to be formed on a very extensive plan, I doubt whether even those laborious men could afford adequate time for this ungrateful research. Yet we cannot pretend to deny, that Roscelin, Anselm, Abelard, Peter Lombard, Albertus Magnus, Thomas Aquinas, Duns Scotus, and Ockham, were men of acute and even profound understandings, the giants of their own generation. Even with the slight knowledge we possess of their tenets, there appear through the cloud of repulsive technical barbarisms rays of metaphysical genius which this age ought not to

despise. Thus in the works of Anselm is found the celebrated argument of Des Cartes for the existence of a Deity, deduced from the idea of an infinitely perfect being. One great object that most of the schoolmen had in view was to establish the principles of natural theology by abstract reasoning. This reasoning was doubtless liable to great difficulties. But a modern writer, who seems tolerably acquainted with the subject, assures us that it would be difficult to mention any theoretical argument to prove the divine attributes, or any objection capable of being raised against the proof, which we do not find in some of the scholastic philosophers.* The most celebrated subjects of discussion, and those on which this class of reasoners were most divided, were the reality of universal ideas, considered as extrinsic to the human mind, and the freedom of will. These have not ceased to occupy the thoughts of metaphysicians; but it will generally be allowed that the prevalence of the Realists in the former question does not give a favourable impression of the scholastic system.†

*. Buhle, Hist. de la Philos. Moderne, t. i. p. 723. This author raises upon the whole a favourable notion of Anselm and Aquinas; but he hardly notices any other.

† Mr. Turner has with his characteristic spirit of enterprize examined some of the writings of our chief English schoolmen, Duns Scotus and Ockham, (Hist. of Engl. vol. i.) and even given us some extracts from them. They seem to me very frivolous, so far as I can collect their meaning. Ockham in particular falls very short of what I had expected; and his nominalism is strangely different from that of Berkeley. We can hardly reckon a man in the right, who is so by accident, and through sophistical reasoning. However, a well known article in the Edinburgh Review, No. LIII. p. 204. gives, from Tenneman, a more favourable account of Ockham.

Perhaps I may have imagined

But all discovery of truth by means of these controversies was rendered hopeless by two insurmountable obstacles, the authority of Aristotle, and that of the church. Wherever obsequious reverence is substituted for bold inquiry, truth, if she is not already at hand, will never be attained. The scholastics did not understand Aristotle, whose original writings they could not read;* but his name was received with implicit faith. They learned his peculiar nomenclature, and fancied that he had given them realities. The authority of the church did them still more harm. It has been said, and probably with much truth, that their metaphysics were injurious to their theology. But I must observe in return, that their theology was equally injurious to metaphysics. Their disputes continually turned upon questions either involving absurdity and contradiction, or at best inscrutable by human comprehension. Those who assert the greatest antiquity of the Roman Catho-

the scholastics to be more forgotten than they really are. Within a short time, I have met with four living English writers who have read parts of Thomas Aquinas; Mr. Turner, Mr. Berington, Mr. Coleridge and the Edinburgh Reviewer. Still I cannot bring myself to think, that there are four more in this country, who could say the same. Certain portions, however, of his writings are still read in the course of instruction of some Catholic universities.

* Roger Bacon, by far the truest philosopher of the middle ages, complains of the ignorance of Aristotle's translators. Every translator, he observes, ought to understand his author's subject, and the two languages from which and into which he is to render the work. But none hitherto, except Boethius, have sufficiently known the languages; nor has one, except Robert Grostete, (the famous bishop of Lincoln,) had a competent acquaintance with science. The rest make egregious errors in both respects. And there is so much misapprehension and obscurity in the Aristotelian writings as thus translated, that no one understands them. Opus Majus, p. 45.

lic doctrine as to the real presence allow that both the word and the definition of transubstantiation are owing to the scholastic writers. Their subtleties were not always so well received. They reasoned at imminent peril of being charged with heresy, which Roscelin, Abelard, Lombard, and Ockham did not escape. In the virulent factions that arose out of their metaphysical quarrels, either party was eager to expose its adversary to detraction and persecution. The Nominalists were accused, one hardly sees why, with reducing, like Sabellius, the persons of the Trinity to modal distinction. The Realists, with more pretence, incurred the imputation of holding a language that savoured of atheism.* In the controversy which the Dominicans and Franciscans, disciples respectively of Thomas Aquinas and Duns Scotus, maintained about grace and free-will, it was of course still more easy to deal in mutual reproaches of heterodoxy. But the schoolmen were in general prudent enough not to defy the censures of the church; and the popes, in return for the support they gave to all exorbitant pretensions of the Holy See, connived at this factious wrangling, which threatened no serious mischief, as it did not proceed from an independent spirit of research. Yet with all their apparent conformity to the received creed, there was, as

* Brucker, p. 733. 912. Mr. Turner has fallen into some confusion as to this point, and supposes the nominalist system to have had a pantheistical tendency, not clearly apprehending its characteristics. p. 512.

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might be expected from the circumstances, a great deal of real deviation from orthodoxy, and even of infidelity. The scholastic mode of dispute, admitting of no termination, and producing no conviction, was the sure cause of scepticism; and the system of Aristotle, especially with the commentaries of Averroes, bore an aspect very unfavourable to natural religion.* The Aristotelian philosophy, even in the hands of the Master, was like a barren tree, that conceals its want of fruit by profusion of leaves. But the scholastic ontology was much worse. What could be more trifling than disquisitions about the nature of angels, their modes of operation, their means of conversing, or (for these were distinguished) the morning and evening state of their understandings?† Into these follies the schoolmen appear to have launched, partly because there was less danger of running against an heresy, in a matter where the church had defined so little; partly from their presumption, which disdained all inquiries into the human mind, as merely a part of physics; and in no small degree through a spirit of mystical fanaticism, derived from the oriental philosophy, and the later Platonists, which blended itself with the cold-blooded technicalities of the Aris-

* Petrarch gives a curious account of the irreligion that prevailed among the learned at Venice and Padua, in consequence of their unbounded admiration for Aristotle and Averroes. One of this school, conversing with him, after expressing much contempt for the Apostles and Fathers, exclaimed: Utinam tu Averroim pati posses, ut videres quanto ille tuis his nugatoribus major sit! Mém. de Pétrarque, t. iii. p. 759. Tiraboschi, t. v. p. 162.

† Brucker, p. 898.

totelian school.* But this unproductive waste of the faculties could not last for ever. Men discovered that they had given their time for the promise of wisdom, and been cheated in the bargain. What John of Salisbury observes of the Parisian dialecticians in his own time, that after several years absence, he found them not a step advanced, and still employed in urging and parrying the same arguments, was equally applicable to the period of centuries. After three or four hundred years, the scholastics had not untied a single knot,

* This mystical philosophy appears to have been introduced into Europe by John Scotus, whom Buhle treats as the founder of the scholastic philosophy; though as it made no sensible progress for two centuries after his time, it seems more natural to give that credit to Roscelin and Anselm. Scotus, or Erigena, as he is perhaps more frequently called, took up, through the medium of a spurious work, ascribed to Dionysius the Areopagite, that remarkable system, which has from time immemorial prevailed in some schools of the east, wherein all external phænomena, as well as all subordinate intellects, are considered as *emanating* from the Supreme being, into whose essence they are hereafter to be absorbed. This system, re-produced under various modifications, and combined with various theories of philosophy and religion, is perhaps the most congenial to the spirit of solitary speculation, and consequently the most extensively diffused of any which those high themes have engendered. It originated no doubt in sublime conceptions of divine omnipotence and ubiquity. But clearness of expression, or indeed of ideas, being not easily connected with mysticism, the language of philosophers adopting the theory of emanation is often hardly distinguishable from that of the pantheists. Brucker, very unjustly, as I imagine from the passages he quotes, accuses John Erigena of pantheism. (Hist. Crit. Philos. p. 620.) The charge would, however, be better grounded against some whose style might deceive an unaccustomed reader. In fact, the philosophy of emanation leads very nearly to the doctrine of an universal substance, which begot the atheistic system of Spinoza, and which appears to have revived with similar consequences among the metaphysicians of Germany. How very closely the language of this oriental philosophy, or even of that which regards the Deity as the soul of the world, may verge upon pantheism, will be perceived (without the trouble of reading the first book of Cudworth) from two famous passages of Virgil and Lucan. Georg. l. iv. v. 219.; and Pharsalia, l. viii. v. 578.

nor added one unequivocal truth to the domain of philosophy. As this became more evident, the enthusiasm for that kind of learning declined; after the middle of the fourteenth century, few distinguished teachers arose among the schoolmen, and at the revival of letters, their pretended science had no advocates left, but among the prejudiced or ignorant adherents of established systems. How different is the state of genuine philosophy, the zeal for which will never wear out by length of time or change of fashion, because the inquirer, unrestrained by authority, is perpetually cheered by the discovery of truth in researches, which the boundless riches of nature seem to render indefinitely progressive!

Yet, upon a general consideration, the attention paid in the universities to scholastic philosophy may be deemed a source of improvement in the intellectual character, when we compare it with the perfect ignorance of some preceding ages. Whether the same industry would not have been more profitably directed, if the love of metaphysics had not intervened, is another question. Philology, or the principles of good taste, degenerated through the prevalence of school-logic. The Latin compositions of the twelfth century are better than those of the three that followed; at least on the northern side of the Alps. I do not, however, conceive that any real correctness of taste, or general elegance of style were likely to subsist in so imperfect a condition of society. These qualities seem to require a certain harmonious correspon-

dence in the tone of manners, before they can establish a prevalent influence over literature. A more real evil was the diverting studious men from mathematical science. Early in the twelfth century, several persons, chiefly English, had brought into Europe some of the Arabian writings on geometry and physics. In the thirteenth the works of Euclid were commented upon by Campano;* and Roger Bacon was fully acquainted with them.† Algebra, so far as the Arabians knew it, extending to quadratic equations, was actually in the hands

* Tiraboschi, t. iv. p. 150.

† There is a very copious and sensible account of Roger Bacon in Wood's History of Oxford, vol. i. p. 332. (Gutch's edition.) I am a little surprized that Antony should have found out Bacon's merit. It is like an oyster judging of a line of battle ship. But I ought not to gibe at the poor antiquary, when he shews good sense.

The resemblance between Roger Bacon and his greater namesake is very remarkable. Whether Lord Bacon ever read the Opus Majus, I know not, but it is singular, that his favourite quaint expression, *prærogativæ* scientiarum, should be found in that work, though not used with the same allusion to the Roman comitia. And whoever reads the sixth part of the Opus Majus, upon experimental science, must be struck by it as the prototype, in spirit, of the Novum Organum. The same sanguine and sometimes rash confidence in the effect of physical discoveries, the same fondness for experiment, the same preference of inductive to abstract reasoning, pervade both works. Roger Bacon's philosophical spirit may be illustrated by the following passage: Duo sunt modi cognoscendi; scilicet per argumentum et experimentum. Argumentum concludit et facit nos concludere questionem; sed non certificat neque removet dubitationem, ut quiescat animus in intuitu veritatis, nisi eam inveniat viâ experientiæ; quia multi habent argumenta ad scibilia, sed quia non habent experientiam, negligunt ea, neque vitant nociva nec persequuntur bona. Si enim aliquis homo, qui nunquam vidit ignem, probavit per argumenta sufficientia quod ignis comburit et lædit res et destruit, nunquam propter hoc quiesceret animus audientis, nec ignem vitaret antequam poneret manum vel rem combustibilem ad ignem, ut per experientiam probaret quod argumentum edocebat; sed assumptâ experientiâ combustionis certificatur animus et quiescit in fulgore veritatis, quo argumentum non sufficit, sed experientia. p. 446.

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of some Italians, at the commencement of the same age, and preserved for almost three hundred years as a secret, though without any conception of its importance. As abstract mathematics require no collateral aid, they may reach the highest perfection in ages of general barbarism; and there seems to be no reason why, if the course of study had been directed that way, there should not have arisen a Newton or a La Place, instead of an Aquinas or an Ockham. The knowledge displayed by Roger Bacon, and by Albertus Magnus, even in the mixed mathematics, under every disadvantage from the imperfection of instruments, and the want of recorded experience, are sufficient to inspire us with regret that their contemporaries were more inclined to astonishment than to emulation. These inquiries indeed were subject to the ordeal of fire, the great purifier of books and men; for if the metaphysician stood a chance of being burned as a heretic, the natural philosopher was in not less jeopardy as a magician.*

Cultivation of the new languages.

A far more substantial cause of intellectual improvement was the development of those new languages that sprang out of the corruption of Latin. For three or four centuries after what was called the romance tongue was spoken in France, there remain but few vestiges of its employment in writing; though we cannot draw an absolute inference from our want of proof, and a critic of much au-

Division of the romance tongue into two dialects.

* See the fate of Cecco d'Ascoli in Tiraboschi, t. v. p. 174.

thority supposes translations to have been made into it for religious purposes from the time of Charlemagne.* During this period the language was split into two very separate dialects, the regions of which may be considered, though by no means strictly, as divided by the Loire. These were called the Langue d'Oil, and the Langue d'Oc; or, in more modern terms, the French and Provençal dialects. In the latter of these I know of nothing which can even by name be traced beyond the year 1100. About that time, Gregory de Bechada, a gentleman of Limousin, recorded the memorable events of the first crusade, then recent, in a metrical history of great length.† This poem has altogether perished; which, considering the popularity of its subject, as M. Sismondi justly remarks, would probably not have been the case if it had possessed any merit. But very soon afterwards a multitude of poets, like a swarm of summer insects, appeared in the southern provinces of France. These were the celebrated Troubadours, whose fame depends far less on their positive excellence, than on the darkness of preceding ages, on the temporary sensation they excited, and their permanent influence

Troubadours of Provence.

* Le Bœuf, Mém. de l'Acad. des Inscript. t. xvii. p. 711.

† Gregorius, cognomento Bechada, de Castro de Turribus, professione miles, subtilissimi ingenii vir, aliquantulum imbutus literis, horum gesta prœliorum maternâ linguâ rythmo vulgari, ut populus pleniter intelligeret, ingens volumen decenter composuit, et ut vera et faceta verba proferret, duodecim annorum spatium super hoc opus operam dedit. Ne verò vilesceret propter verbum vulgare, non sine præcepto episcopi Eustorgii, et consilio Glauberti Normanni hoc opus aggressus est. I transcribe this from M. Heeren's Essai sur les Croisades, p. 447.; whose reference is to Labbé, Bibliotheca nova MSS. t. ii. p. 296.

on the state of European poetry. From William count of Poitou, the earliest troubadour on record, who died in 1126, to their extinction about the end of the next century, there were probably several hundred of these versifiers in the language of Provence, though not always natives of France. Millot has published the lives of one hundred and forty-two, besides the names of many more whose history is unknown; and a still greater number, it cannot be doubted, are unknown by name. Among those poets are reckoned a king of England, (Richard I.) two of Aragon, one of Sicily, a dauphin of Auvergne, a count of Foix, a prince of Orange, many noblemen, and several ladies. One can hardly pretend to account for this sudden and transitory love of verse; but it is manifestly one symptom of the rapid impulse which the human mind received in the twelfth century, and contemporaneous with the severer studies that began to flourish in the universities. It was encouraged by the prosperity of Languedoc and Provence, undisturbed, comparatively with other countries, by internal warfare, and disposed by the temper of their inhabitants to feel with voluptuous sensibility the charm of music and amorous poetry. But the tremendous storm that fell upon Languedoc in the crusade against the Albigeois shook off the flowers of Provençal verse; and the final extinction of the fief of Toulouse, with the removal of the counts of Provence to Naples, deprived the troubadours of their most eminent patrons. An attempt was made in the next century to revive them, by distributing

prizes for the best composition in the Floral Games of Toulouse, which have sometimes been erroneously referred to a higher antiquity.* This institution perhaps still remains; but, even in its earliest period, it did not establish the name of any Provençal poet. Nor can we deem those fantastical solemnities, styled Courts of Love, where ridiculous questions of metaphysical gallantry were debated by poetical advocates, under the presidency and arbitration of certain ladies, much calculated to bring forward any genuine excellence. They illustrate, however, what is more immediately my own object, the general ardour for poetry, and the manners of those chivalrous ages.†

Their poetical character.

The great reputation acquired by the troubadours, and panegyrics lavished on some of them by Dante and Petrarch excited a curiosity among literary men, which has been a good deal disappointed by further acquaintance. An excellent French antiquary of the last age, La Curne de St. Palaye, spent great part of his life in accumulating manuscripts of Provençal poetry, very little of which had ever been printed. Translations from part of this collection, with memorials of the

* De Sade, Vie de Pétrarque, t. i. p. 155. Sismondi, Litt. du Midi, t. i. p. 228.

† For the Courts of Love, see De Sade, Vie de Pétrarque, t. ii. note 19. Le Grand, Fabliaux, t. i. p. 270. Roquefort, Etat de la Poésie Françoise, p. 94. I have never had patience to look at the older writers who have treated this tiresome subject. It is a satisfaction to reflect that the country which has produced more eminent and original poets than any other has never been infected by the fopperies of academies and their prizes. Such an institution as the Society degli Arcadi could at no time have endured public ridicule in England for a fortnight.

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writers, were published by Millot; and we certainly do not often meet with passages in his three volumes which give us any poetical pleasure.* Some of the original poems have since been published, and the extracts made from them by the recent historians of southern literature are rather superior. The troubadours chiefly confined themselves to subjects of love, or rather gallantry, and to satires (sirventes) which are sometimes keen and spirited. No romances of chivalry, and hardly any tales are found among their works. There seems a general deficiency of imagination, and especially of that vivid description which distinguishes works of genius in the rudest period of society. In the poetry of sentiment, their favourite province, they seldom attain any natural expression, and consequently produce no interest. I speak of course on the presumption that the best specimens have been exhibited by those who have undertaken the task. It must be allowed, however, that we cannot judge of the troubadours at a greater disadvantage than through the prose translations of Millot. Their poetry was entirely of that class which is allied to music, and excites the fancy or feelings rather by the power of sound than any stimulancy of imagery and passion. Possessing a flexible and harmonious language, they invented a variety of metrical arrangements, perfectly new to the nations of Europe. The Latin hymns were striking, but monotonous, the metre

* Histoire Littéraire des Troubadours, Paris, 1774.

of the northen French unvaried; but in Provençal poetry, almost every length of verse, from two syllables to twelve, and the most intricate disposition of rhymes were at the choice of the troubadour. The canzoni, the sestine, all the lyric metres of Italy and Spain, were borrowed from his treasury. With such a command of poetical sounds, it was natural that he should inspire delight into ears not yet rendered familiar to the artifices of verse; and even now the fragments of these ancient lays, quoted by M. Sismondi and M. Ginguené, seem to possess a sort of charm that has evaporated in translation. Upon this harmony, and upon the facility with which mankind are apt to be deluded into an admiration of exaggerated sentiment in poetry, they depended for their influence. And, however vapid the songs of Provence may seem to our apprehensions, they were undoubtedly the source from which poetry for many centuries derived a great portion of its habitual language.*

It has been maintained by some antiquaries that Northern

* Two very modern French writers, M. Ginguené (Histoire Littéraire d'Italie. Paris, 1811.) and M. Sismondi (Littérature du Midi de l'Europe, Paris, 1813.) have revived the poetical history of the troubadours. To them, still more than to Millot and Tiraboschi, I would acknowledge my obligations for the little I have learned in respect of this forgotten school of poetry. Notwithstanding, however, the heaviness of Millot's work, a fault not imputable to himself, though Ritson, as I remember, calls him in his own polite style, "a blockhead," it will always be useful to the inquirer into the manners and opinions of the middle ages, from the numerous illustrations it contains of two general facts; the extreme dissoluteness of morals among the higher ranks, and the prevailing animosity of all classes against the clergy.

French poetry and prose.

the northern romance, or what we properly call French, was not formed until the tenth century, the common dialect of all France having previously resembled that of Languedoc. This hypothesis may not be indisputable; but the question is not likely to be settled, as scarcely any written specimens of romance, even of that age, have survived.* In the eleventh century, among other more obscure productions, both in prose and metre, there appears what, if unquestioned as to authenticity, would be a valuable monument of this language; the laws of William the Conqueror. These are preserved in a manuscript of Ingulfus's History of Croyland, a blank being left in other copies where they should be inserted.† They are written in an idiom so far removed from the Provençal, that one would be disposed to think the separation between these two species of romance of older standing than is commonly allowed. But it has been thought probable that these laws, which in fact were a mere repetition of those of Edward the Confessor, were

* Hist. Litt. de la France, t. vii. p. 58. Le Bœuf, according to these Benedictins, has published some poetical fragments of the tenth century; and they quote part of a charter as old as 940 in romance. p. 59. But that antiquary, in a memoir printed in the seventeenth volume of the Academy of Inscriptions, which throws more light on the infancy of the French language than any thing within my knowledge, says only, that the earliest specimens of verse in the royal library are of the eleventh century *au plus tard.* p. 717. M. de la Rue is said to have found some poems of the eleventh century in the British Museum. Roquefort, Etat de la Poésie Françoise, p. 206. Le Bœuf's fragment may be found in this work, p. 279.; it seems nearer to the Provençal than the French dialect.

† Gale 15 Script, t. i. p. 88.

originally published in Anglo-Saxon, the only language intelligible to the people, and translated, at a subsequent period, by some Norman monk into French.* This, indeed, is not quite satisfactory, as it would have been more natural for such a transcriber to have rendered them into Latin; and neither William, nor his successors, were accustomed to promulgate any of their ordinances in the vernacular language of England.

The use of a popular language became more common after the year 1100. Translations of some books of Scripture and acts of saints were made about that time, or even earlier, and there are French sermons of St. Bernard, from which extracts have been published, in the royal library at Paris.† In 1126, a charter was granted by Louis VI. to the city of Beauvais in French.‡ Metrical compositions are in general the first literature of a nation, and, even if no distinct proof could be adduced, we might assume their existence before the twelfth century. There is, however, evidence, not to mention the fragments printed by Le Bœuf, of certain lives of saints translated into French

* Ritson's Dissertation on Romance, p. 66.

† Hist. Litt. t. ix. p. 149. Fabliaux par Barbasan, vol. i. p. 9. edit. 1808. Mem. de l'Académie des Inscr. t. xv. and xvii. p. 714., &c.

‡ Mabillon speaks of this as the oldest French instrument he had seen. But the Benedictins quote some of the eleventh century. Hist. Litt. t. vii. p. 59. This charter is supposed by the authors of Nouveau Traité de Diplomatique to be translated from the Latin. t. iv. p. 519. French charters, they say, are not common before the age of Louis IX.; and this is confirmed by those published in Martenne's Thesaurus Anecdotorum, which are very commonly in French from his reign, but hardly ever before.

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verse by Thibault de Vernon, a canon of Rouen, before the middle of the preceding age. And we are told that Taillefer, a Norman minstrel, recited a song or romance on the deeds of Roland, before the army of his countrymen, at the battle of Hastings in 1066. Philip de Than, a Norman subject of Henry I., seems to be the earliest poet, whose works as well as name have reached us, unless we admit a French translation of the work of one Marbode upon precious stones to be more ancient.* This de Than wrote a set of rules for computation of time, and an account of different calendars. A happy theme for inspiration without doubt! Another performance of the same author is a treatise on birds and beasts, dedicated to Adelaide, queen of Henry I.† But a more famous votary of the muses was Wace, a native of Jersey, who, about the beginning of Henry II.'s reign, turned Geoffrey of Monmouth's history into French metre. Besides this poem, called le Brut d'Angleterre, he composed a series of metrical histories, containing the transactions of the dukes of Normandy, from Rollo, their great progenitor, who gave name to the Roman de Rou, down to his own age. Other productions are ascribed to Wace, who was at least a prolific versifier, and if he seem to deserve no

* Ravalière, Révol. de la Langue Françoise, p. 116., doubts the age of this translation.

† Archæologia, vols. xii. and xiii. These memoirs by M. de la Rue, former professor of history at Caen, are among the very best that our Society of Antiquaries has published. I think our last volumes improve a little; and but a little. But a comparison with the Academy of Inscriptions, in its better days, must still inspire us with shame.

higher title at present, has a claim to indulgence, and even to esteem, as having far excelled his contemporaries, without any superior advantages of knowledge. In emulation, however, of his fame, several Norman writers addicted themselves to composing chronicles, or devotional treatises in metre. The court of our Norman kings was to the early poets in the Langue d'Oil, what those of Arles and Toulouse were to the troubadours. Henry I. was fond enough of literature to obtain the sirname of Beauclerc; Henry II. was more indisputably an encourager of poetry; and Richard I. has left compositions of his own in one or other (for the point is doubtful) of the two dialects spoken in France.*

Norman romances and tales.

If the poets of Normandy had never gone beyond historical and religious subjects, they would probably have had less claim to our attention than their brethren of Provence. But a different and far more interesting species of composition began to be cultivated in the latter part of the twelfth century. Without entering upon the controverted question as to the origin of romantic fictions, referred by one party to the Scandinavians, by a second to the Arabs, by others to the natives of Britany, it is manifest that the actual stories upon which one early and numerous class of romances

* Millot says that Richard's sirventes (satirical songs) have appeared in French, as well as Provençal, but that the former is probably a translation. Hist. des Troubadours, vol. i. p. 54. Yet I have met with no writer who quotes them in the latter language; and M. Ginguené, as well as Le Grand d'Aussy, consider Richard as a trouveur.

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was founded are related to the traditions of the last people. These are such as turn upon the fable of Arthur; for though we are not entitled to deny the existence of such a personage, his story seems chiefly the creation of Celtic vanity. Traditions current in Britany, though probably derived from this island, became the basis of Geoffrey of Monmouth's Latin prose, which, as has been seen, was transfused into French metre by Wace.* The vicinity of Normandy enabled its poets to enrich their narratives with other Armorican fictions, all relating to the heroes who had surrounded the table of the son of Uther. An equally imaginary history of Charlemagne gave rise to a new family of romances. The authors of these fictions were called Trouveurs, a name obviously identical with that of Troubadours. But, except in name, there was no resemblance between the minstrels of the northern and southern dialects. The invention of one class was turned to description, that of the other to sentiment; the first were epic in their form and style, the latter almost always lyric. We cannot perhaps give a better notion of their dissimilitude, than by saying that one school produced Chaucer, and the other Petrarch. Besides these romances of chivalry, the trouveurs displayed their powers of lively narration in comic tales or fabliaux, (a name

* This derivation of the romantic stories of Arthur, which le Grand d'Aussy ridiculously attributes to the jealousy entertained by the English of the renown of Charlemagne, is stated in a very perspicuous and satisfactory manner by Mr. Ellis in his Specimens of Early English Metrical Romances.

sometimes extended to the higher romance,) which have aided the imagination of Boccace and la Fontaine. These compositions are certainly more entertaining than those of the troubadours; but, contrary to what I have said of the latter, they often gain by appearing in a modern dress. Their versification, which doubtless had its charm, when listened to around the hearth of an ancient castle, is very languid and prosaic, and suitable enough to the tedious prolixity into which the narrative is apt to fall; and though we find many sallies of that arch and sprightly simplicity which characterizes the old language of France as well as England, it requires, upon the whole, a factitious taste to relish these Norman tales, considered as poetry in the higher sense of the word, distinguished from metrical fiction.

Roman de la Rose.

A manner different enough from that of the fabliaux was adopted in the Roman de la Rose, begun by William de Loris about 1250, and completed by John de Meun half a century later. This poem, which contains about 16,000 lines in the usual octo-syllable verse, from which the early French writers seldom deviated, is an allegorical vision, wherein love, and the other passions or qualities connected with it, pass over the stage, without the intervention, I believe, of any less abstract personages. Though similar allegories were not unknown to the ancients, and, which is more to the purpose, may be found in other productions of the thirteenth century, none had been constructed so elaborately as that of the Roman

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de la Rose. Cold and tedious as we now consider this species of poetry, it originated in the creative power of imagination, and appealed to more refined feelings than the common metrical narratives could excite. This poem was highly popular in the middle ages, and became the source of those numerous allegories which had not ceased in the seventeenth century.

Works in French prose.

The French language was employed in prose, as well as in metre. Indeed it seems to have had almost an exclusive privilege in this respect. The language of Oil, says Dante, in his treatise on vulgar speech, prefers its claim to be ranked above those of Oc and Si, (Provençal and Italian,) on the ground, that all translations, or compositions in prose have been written therein, from its greater facility and grace; such as the books compiled from the Trojan and Roman stories, the delightful fables about Arthur, and many other works of history and science.* I have mentioned already the sermons of St. Bernard, and translations from Scripture. The laws of the kingdom of Jerusalem purport to have been drawn up immediately after the first crusade; and though their language has been materially altered, there seems no doubt

* Prose e Rime di Dante, Venez. 1758. t. iv. p. 261. Dante's words, biblia cum Trojanorum Romanorumque gestibus compilata, seem to bear no other meaning than what I have given. But there may be a doubt whether *biblia* is ever used except for the Scriptures; and the Italian translator renders it; cioè la bibbia, i fatti de i Trojani, e de i Romani. In this case something is wrong in the original Latin, and Dante will have alluded to the translations of parts of Scripture made into French, as mentioned in the text.

that they were originally compiled in French.* Besides some charters, there are said to have been prose romances before the year 1200.† Early in the next age, Ville Hardouin, seneschal of Champagne, recorded the capture of Constantinople in the fourth crusade, an expedition, the glory and reward of which he had personally shared, and, as every original work of prior date has either perished, or is of small importance, may be deemed the father of French prose. The establishments of St. Louis, and the law treatise of Beaumanoir, fill up the interval of the thirteenth century, and before its conclusion we must suppose the excellent memoirs of Joinville to have been composed, since they are dedicated to Louis X. in 1315, when the author could hardly be less than ninety years of age. Without prosecuting any farther the history of French literature, I will only mention the translations of Livy and Sallust, made in the reign and by the order of John, with those of Cæsar, Suetonius, Ovid, and parts of Cicero, which are due to his successor Charles V.‡

* The Assises de Jerusalem have undergone two revisions; one, in 1250, by order of John d'Ibelin, count of Jaffa, and a second in 1369, by sixteen commissioners chosen by the states of the kingdom of Cyprus. Their language seems to be such as might be expected from the time of the former revision.

† Several prose romances were written or translated from the Latin about 1170, and afterwards. Mr. Ellis seems inclined to dispute their antiquity. But, besides the authorities of La Ravalière and Tressan, the latter of which is not worth much, a late very extensively informed writer seems to have put this matter out of doubt. Roquefort Flamericourt, Etat de la Poésie Française dans les 12me et 13me siècles. Paris. 1815. p. 147.

‡ Villaret, Hist. de France, t. xi. p. 121. De Sade, Vie de Pétrarque, t. iii. p. 548. Charles V. had more learning than most princes of his time. Christine de Pisan, a lady who has written memoirs, or rather an eulogy of him, says that his father le fist introduire en lettres moult suffisant-

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Spanish language.

I confess myself wholly uninformed as to the original formation of the Spanish language, and as to the epoch of its separation into the two principal dialects of Castile and Portugal or Gallicia;* nor should I perhaps have alluded to the literature of that peninsula, were it not for a remarkable poem which shines out among the minor lights of those times. This is a metrical life of the Cid Ruy Diaz, written in a barbarous style and with the rudest inequality of measure, but with a truly Homeric warmth and vivacity of delineation. It is much to be regretted, that the author's name has perished, but its date seems to be not later than the middle of the twelfth century, while the hero's actions were yet recent, and before the taste of Spain had been corrupted by the Provençal troubadours, whose extremely different manner would, if it did not pervert the poet's genius, at least have impeded his popularity. A very competent judge has pronounced the poem

ment, et tant que competemment entendoit son Latin, et souffisamment scavoit les regles de grammaire: la quelle chose pleust a dieu qu' ainsi fust accoutumée entre les princes. Collect de Mém. t. v. p. 103. 190. &c.

* The earliest Spanish that I remember to have seen is an instrument in Martenne, Thesaurus Anecdotorum, t. i. p. 263.; the date of which is 1095. Persons more conversant with the antiquities of that country may possibly go farther back. Another of 1101 is published in Marina's Teoria de las Cortes, t. iii. p. 1. It is in a Vidimus by Peter the Cruel; and cannot, I presume, have been a translation from the Latin. Yet the editors of Nouveau Tr. de Diplom. mention a charter of 1243, as the earliest they are acquainted with in the Spanish language. t. iv. p. 525.

Charters in the German language, according to the same work, first appear in the time of the emperor Rodolph, after 1272, and became usual in the next century. p. 523. But Struvius mentions an instrument of 1235, as the earliest in German. Corp. Hist. Germ. p. 457.

of the Cid to be "decidedly and beyond comparison the finest in the Spanish language." It is at least superior to any that was written in Europe before the appearance of Dante.*

Early writers in the Italian.

A strange obscurity envelops the infancy of the Italian language. Though it is certain that grammatical Latin had ceased to be employed in ordinary discourse, at least from the time of Charlemagne, we have not a single passage of undisputed authenticity, in the current idiom, for nearly four centuries afterwards. Though Italian phrases are mixed up in the barbarous jargon of some charters, not an instrument is extant in that language before the year 1200; unless we may reckon one in the Sardinian dialect, (which I believe was rather Provençal than Italian,) noticed by Muratori.† Nor is there a vestige of Italian poetry older than a few fragments of Ciullo d'Alcamo, a Sicilian, who must have written before 1193, since he mentions Saladin as then living.‡ This may strike us as the more remarkable, when we consider the political circumstances of Italy in the eleventh and twelfth centuries. From the struggles of her spirited republics against the

* An extract from this poem was published in 1808 by Mr. Southey, at the end of his "Chronicle of the Cid," the materials of which it partly supplied, accompanied by an excellent version by a gentleman, who is distinguished, among many other talents, for an unrivalled felicity in expressing the peculiar manner of authors whom he translates or imitates. M. Sismondi has given other passages, in the third volume of his essay on Southern Literature. This popular and elegant work contains some interesting and not very common information as to the early Spanish poets in the Provençal dialect, as well as those who wrote in Castilian.

† Dissert. 32.

‡ Tiraboschi, t. iv. p. 340.

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emperors, and their internal factions, we might, upon all general reasoning, anticipate the early use and vigorous cultivation of their native language. Even if it were not yet ripe for historians and philosophers, it is strange that no poet should have been inspired with songs of triumph or invective by the various fortunes of his country. But on the contrary the poets of Lombardy became troubadours, and wasted their genius in Provençal love-strains at the courts of princes. The Milanese and other Lombard dialects were indeed exceedingly rude; but this rudeness separated them more decidedly from Latin, nor is it possible that the Lombards could have employed that language intelligibly for any public or domestic purpose. And indeed in the earliest Italian compositions that have been published, the new language is so thoroughly formed, that it is easy to infer a very long disuse of that from which it was derived. The Sicilians claim the glory of having first adapted their own harmonious dialect to poetry. Frederic II. both encouraged their art and cultivated it; among the very first essays of Italian verse we find his productions, and those of his chancellor Piero delle Vigne. Thus Italy was destined to owe the beginnings of her national literature to a foreigner and an enemy. These poems are very short and few; those ascribed to St. Francis about the same time are hardly distinguishable from prose; but after the middle of the thirteenth century, the Tuscan poets awoke to a sense of the beauties which their native language,

refined from the impurities of vulgar speech,* could display; and the genius of Italian literature was rocked upon the restless waves of the Florentine democracy. Ricordano Malespini, the first historian, and nearly the first prose writer in Italian, left memorials of that republic down to the year 1281, which was that of his death, and it was continued by Giacchetto Malespini to 1286. These are little inferior in purity of style to the best Tuscan authors; for it is the singular fate of that language to have spared itself all intermediate stages of refinement, and starting the last in the race, to have arrived almost instantaneously at the goal. There is an interval of not much more than half a century between the short fragment of Ciullo d'Alcamo mentioned above, and the poems of Guido Guinizzelli, Guitone d'Arezzo, and Guido Cavalcante; which, in their diction and turn of thought, are sometimes not unworthy of Petrarch.†

* Dante, in his treatise De vulgari Eloquentiâ, reckons fourteen or fifteen dialects, spoken in different parts of Italy, all of which were debased by impure modes of expression. But the "noble, principal, and courtly Italian idiom" was that, which belonged to every city, and seemed to belong to none, and which, if Italy had a court, would be the language of that court. p. 274. 277.

Allowing for the metaphysical obscurity in which Dante chuses to envelop the subject, this might perhaps be said at present. The Florentine dialect has its peculiarities, which distinguish it from the general Italian language, though these are seldom discerned by foreigners, nor always by natives, with whom Tuscan is the proper denomination of their national tongue.

† Tiraboschi, t. iv. p. 309—377. Ginguené, vol. i. c. 6. The style of the Vita Nuova of Dante, written soon after the death of his Beatrice, which happened in 1290, is hardly distinguishable, by a foreigner, from that of Machiavel or Castiglione. Yet so recent was the adoption of this language, that the celebrated master of Dante,

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Dante.

But at the beginning of the next age arose a much greater genius, the true father of Italian poetry, and the first name in the literature of the middle ages. This was Dante, or Durante Alighieri, born in 1265, of a respectable family at Florence. Attached to the Guelf party, which had then obtained a final ascendancy over its rival, he might justly promise himself the natural reward of talents under a free government, public trust and the esteem of his compatriots. But the Guelfs unhappily were split into two factions, the Bianchi and the Neri, with the former of whom, and, as it proved, the unsuccessful side, Dante was connected. In 1300, he filled the office of one of the Priori, or chief magistrates at Florence; and having manifested in this, as was alledged, some partiality towards the Bianchi, a sentence of proscription passed against him about two years afterwards, when it became the turn of the opposite faction to triumph. Banished from his country, and baffled in several efforts of his friends to restore their fortunes, he had no resource but at the courts of the Scalas at Verona, and other Italian princes, attaching himself in adversity to the

Brunetto Latini, had written his *Tesoro* in French; and gives as a reason for it, that it was a more agreeable and usual language than his own. Et se auçuns demandoit pourquoi chis livre est ecris en romans, selon la raison de France, pour chose que nous sommes ytalien, je diroie que ch'est pour chose que nous sommes en France; l'autre pour chose *que la parleure en est plus delitable et plus commune a toutes gens.* There is said to be a manuscript history of Venice down to 1275, in the Florentine library, written in French by Martin de Canale, who says that he has chosen that language, parceque la langue franceise cort parmi le monde, et est la plus delitable a lire et a oir que nulle autre. Ginguené, vol. i. p. 384.

Imperial interests, and tasting, in his own language, the bitterness of another's bread.* In this state of exile he finished, if he did not commence, his great poem, the Divine Comedy; a representation of the three kingdoms of futurity, Hell, Purgatory, and Paradise, divided into one hundred cantos, and containing about 14,000 lines. He died at Ravenna in 1321.

Dante is among the very few, who have created the national poetry of their country. For notwithstanding the polished elegance of some earlier Italian verse, it had been confined to amorous sentiment; and it was yet to be seen, that the language could sustain, for a greater length than any existing poem except the Iliad, the varied style of narration, reasoning and ornament. Of all writers, he is the most unquestionably original. Virgil was indeed his inspiring genius, as he declares himself, and as may sometimes be perceived in his diction; but his tone is so peculiar and characteristic, that few readers would be willing at first to acknowledge any resemblance. He possessed, in an extraordinary degree, a command of language, the abuse of which led to his obscurity and licentious innovations. No poet ever excelled him in conciseness, and in the rare talent of finishing his pictures by a few bold touches; the merit of Pindar in his better hours. How prolix would the stories of Francesca or of Ugo-

* Tu proverai si (says Cacciaguida to him) come sà di sale
Il pane altrui, e come è duro calle
Il scendere e 'l salir per altrui scale.
Paradis. cant. 16.

lino have become in the hands of Ariosto, or of Tasso, or of Ovid, or of Spenser! This excellence indeed is most striking in the first part of his poem. Having formed his plan so as to give an equal length to the three regions of his spiritual world, he found himself unable to vary the images of hope or beatitude, and the Paradise is a continual accumulation of descriptions, separately beautiful, but uniform and tedious. Though images derived from light and music are the most pleasing, and can be borne longer in poetry than any others, their sweetness palls upon the sense by frequent repetition, and we require the intermixture of sharper flavours. Yet there are detached passages of great excellence in this third part of Dante's poem; and even in the long theological discussions which occupy the greater proportion of its thirty-three cantos, it is impossible not to admire the enunciation of abstract positions with remarkable energy, conciseness, and sometimes perspicuity. The twelve first cantos of the Purgatory are an almost continual flow of soft and brilliant poetry. The seven last are also very splendid, but there is some heaviness in the intermediate parts. Fame has justly given the preference to the Inferno, which displays throughout a more vigorous and masterly conception; but the mind of Dante cannot be thoroughly appreciated without a perusal of his entire poem.

The most forced and unnatural turns, the most barbarous licences of idiom, are found in this poet, whose power of expression is, at other

times, so peculiarly happy. His style is indeed generally free from those conceits of thought, which discredited the other poets of his country; but no sense is too remote for a word, which he finds convenient for his measure or his rhyme. It seems indeed as if he never altered a line on account of the necessity of rhyme, but forced another or perhaps a third into company with it. For many of his faults no sufficient excuse can be made. But it is candid to remember, that Dante, writing almost in the infancy of a language, which he contributed to create, was not to anticipate that words, which he borrowed from the Latin, and from the provincial dialects, would by accident, or through the timidity of later writers, lose their place in the classical idiom of Italy. If Petrarch, Bembo, and a few more, had not aimed rather at purity than copiousness, the phrases which now appear barbarous, and are at least obsolete, might have been fixed by use in poetical language.

The great characteristic excellence of Dante is elevation of sentiment, to which his compressed diction and the emphatic cadences of his measure admirably correspond. We read him, not as an amusing poet, but as a master of moral wisdom, with reverence and awe. Fresh from the deep and serious, though somewhat barren studies of philosophy, and schooled in the severer discipline of experience, he has made of his poem a mirror of his mind and life, the register of his solicitudes and sorrows, and of the speculations in which he sought to escape their recollection. The banished

magistrate of Florence, the disciple of Brunetto Latini, the statesman accustomed to trace the varying fluctuations of Italian faction, is for ever before our eyes. For this reason, even the prodigal display of erudition, which in an epic poem would be entirely misplaced, increases the respect we feel for the poet, though it does not tend to the reader's gratification. Except Milton, he is much the most learned of all the great poets, and, relatively to his age, far more learned than Milton. In one so highly endowed by nature, and so consummate by instruction, we may well sympathize with a resentment which exile and poverty rendered perpetually fresh. The heart of Dante was naturally sensible, and even tender; his poetry is full of simple comparisons from rural life; and the sincerity of his early passion for Beatrice pierces through the veil of allegory which surrounds her. But the memory of his injuries pursues him into the immensity of eternal light; and, in the company of saints and angels, his unforgiving spirit darkens at the name of Florence.*

This great poem was received in Italy with that enthusiastic admiration which attaches itself to works of genius only in ages too rude to listen to the envy of competitors, or the fastidiousness of critics. Almost every library in that country contains manuscript copies of the Divine Comedy, and an account of those who have abridged or commented upon it would swell to a volume. It

* Paradiso, cant. 16.

was thrice printed in the year 1472, and at least nine times within the fifteenth century. The city of Florence in 1373, with a magnanimity which almost redeems her original injustice, appointed a public professor to read lectures upon Dante; and it was hardly less honourable to the poet's memory, that the first person selected for this office was Boccaccio. The universities of Pisa and Piacenza imitated this example; but it is probable that Dante's abstruse philosophy was often more regarded in their chairs, than his higher excellencies.* Italy indeed, and all Europe, had reason to be proud of such a master. Since Claudian, there had been seen for nine hundred years no considerable body of poetry, except the Spanish poem of the Cid, of which no one had heard beyond the peninsula, that could be said to pass mediocrity; and we must go much farther back than Claudian, to find any one capable of being compared with Dante. His appearance was an epoch in the intellectual history of modern nations, and undeceived them of the discouraging suspicion which long ages of lethargy tended to excite, that nature had exhausted her fertility in the great poets of Greece and Rome. It was as if, at some of the ancient games, a stranger had appeared upon the plain, and thrown his quoit among the marks of former casts, which tradition had ascribed to the demigods. But the admiration of Dante, though it gave a general impulse to the human

* Velli, Vita di Dante. Tiraboschi.

mind, did not produce imitators. I am unaware at least of any writer, in whatever language, who can be said to have followed the steps of Dante; I mean not so much in his subject, as in the character of his genius and style. His orbit is still all his own, and the track of his wheels can never be confounded with that of a rival.*

Petrarch.

In the same year that Dante was expelled from Florence, a notary, by name Petracco, was involved in a similar banishment. Retired to Arezzo, he there became the father of Francis Petrarch. This great man shared of course during his early years in the adverse fortune of his family, which he was invincibly reluctant to restore, according to his father's wish, by the profession of jurisprudence. The strong bias of nature determined him to polite letters and poetry. These are seldom the fountains of wealth; yet they would perhaps have been such to Petrarch, if his temper could have borne the sacrifice of liberty for any worldly acquisitions. At the city of Avignon, where his parents had latterly resided, his graceful appearance and the reputation of his talents attracted one of the Colonna family, then bishop of Lombes in Gascony. In him, and in other members of that great house, never so illus-

* The source from which Dante derived the scheme and general idea of his poem has been a subject of inquiry in Italy. To his original mind one might have thought the sixth Æneid would have sufficed. But besides several legendary visions of the 12th and 13th centuries, it seems probable that he derived hints from the Tesoretto of his master in philosophical studies, Brunetto Latini. Ginguené, t. ii. p. 8.

trious as in the fourteenth century, he experienced the union of patronage and friendship. This, however, was not confined to the Colonnas. Unlike Dante, no poet was ever so liberally and sincerely encouraged by the great; nor did any, perhaps, ever carry to that perilous intercourse a spirit more irritably independent, or more free from interested adulation. He praised his friends lavishly, because he loved them ardently; but his temper was easily susceptible of offence, and there must have been much to tolerate in that restlessness and jealousy of reputation, which is perhaps the inevitable failing of a poet.* But every thing was forgiven to a man, who was the acknowledged boast of his age and country. Clement VI. conferred one or two sinecure benefices upon Petrarch, and would probably have raised him to a bishopric, if he had chosen to adopt the ecclesiastical profession. But he never

* There is an unpleasing proof of this quality in a letter to Boccaccio on Dante, whose merit he rather disingenuously extenuates; and whose popularity evidently stung him to the quick. De Sade, t. iii. p. 512. Yet we judge so ill of ourselves, that Petrarch chose envy as the vice from which of all others he was most free. In his dialogue with St. Augustin, he says; Quicquid libuerit, dicito; modo me non accuses invidiæ. Aug. Utinam non tibi magis superbia quam invidia nocuisset; nam hoc crimine, me judice, liber es. De Contemptu Mundi. Edit. 1581. p. 342.

I have read in some modern book, but know not where to seek the passage, that Petrarch did not intend to allude to Dante in the letter to Boccaccio mentioned above, but rather to Zanobi Strata, a contemporary Florentine poet, whom, however forgotten at present, the bad taste of a party in criticism preferred to himself. Matteo Villani mentions them together as the two great ornaments of his age. This conjecture seems probable, for some expressions are not in the least applicable to Dante. But whichever was intended, the letter equally shews the irritable humour of Petrarch.

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took orders, the clerical tonsure being a sufficient qualification for holding canonries. The same pope even afforded him the post of apostolical secretary, and this was repeated by Innocent VI. I know not whether we should ascribe to magnanimity, or to a politic motive, the behaviour of Clement VI. towards Petrarch, who had pursued a course as vexatious as possible to the Holy See. For not only he made the residence of the supreme pontiffs at Avignon, and the vices of their court, the topic of invectives, too well founded to be despised, but he had ostentatiously put himself forward as the supporter of Nicola di Rienzi in a project which could evidently have no other aim than to wrest the city of Rome from the temporal sovereignty of its bishop. Nor was the friendship and society of Petrarch less courted by the most respectable Italian princes; by Robert king of Naples, by the Visconti, the Correggi of Parma, the famous doge of Venice Andrew Dandolo, and the Carrara family of Padua, under whose protection he spent the latter years of his life. Stories are related of the respect shewn to him by men in humbler stations which are perhaps still more satisfactory.* But the most conspicuous testimony

* A goldsmith of Bergamo, by name Henry Capra, smitten with an enthusiastic love of letters, and of Petrarch, earnestly requested the honour of a visit from the poet. The house of this good tradesman was full of representations of his person, and of inscriptions with his name and arms. No expense had been spared in copying all his works as they appeared. He was received by Capra with a princely magnificence; lodged in a chamber hung with purple, and a splendid bed in which no one before or after him was permitted to sleep. Goldsmiths, as we may judge by this instance, were opulent per-

of public esteem was bestowed by the city of Rome, in his solemn coronation, as laureat poet, in the Capitol. This ceremony took place in 1341; and it is remarkable that Petrarch had at that time composed no works, which could, in our estimation, give him pretensions to so singular an honour.

The moral character of Petrarch was formed of dispositions, peculiarly calculated for a poet. An enthusiast in the emotions of love, of friendship, of glory, of patriotism, of religion, he gave the rein to all their impulses; and there is not perhaps a page in his Italian writings which does not bear the trace of one or other of these affections. By far the most predominant, and that which has given the greatest celebrity to his name, is his passion for Laura. Twenty years of unrequited and almost unaspiring love were lightened by song; and the attachment, which, having long survived the beauty of its object,* seems to have at one time nearly passed from the heart to the fancy, was changed to an intenser feeling, and to

sons; yet the friends of Petrarch dissuaded him from this visit, as derogatory to his own elevated station. De Sade, t. iii. p. 496.

* See the beautiful sonnet, Erano i capei d'oro all' aura sparsi. In a famous passage of his Confessions, he says; Corpus illud egregium morbis et crebris partubus exhaustum, multum pristini vigoris amisit. Those who maintain the virginity of Laura are forced to read *perturbationibus*, instead of *partubus*. Two manuscripts in the royal library at Paris have the contraction *ptbus*, which leaves the matter open to controversy. De Sade contends, that "crebris" is less applicable to "perturbationibus" than to "partubus." I do not know that there is much in this; but I am clear that corpus exhaustum partubus is much the more elegant Latin expression of the two.

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a sort of celestial adoration, by her death. Laura, before the time of Petrarch's first accidental meeting with her, was united in marriage with another; a fact, which, besides some more particular evidence, appears to me deducible from the whole tenor of his poetry.* Such a passion is un-

* The Abbé de Sade, in those copious memoirs of the life of Petrarch, which illustrate in an agreeable though rather prolix manner the civil and literary history of Provence and Italy in the fourteenth century, endeavoured to establish his own descent from Laura, as the wife of Hugues de Sade, and born in the family de Noves. This hypothesis has since been received with general acquiescence by literary men; and Tiraboschi in particular, whose talent lay in these petty biographical researches, and who had a prejudice against every thing that came from France, seems to consider it as decisively proved. But it has been called in question in a modern publication by the late lord Woodhouselee. (Essay on the Life and Character of Petrarch, 1810.) I shall not offer any opinion as to the identity of Petrarch's mistress with Laura de Sade; but the main position of Lord W.'s essay, that Laura was an unmarried woman, and the object of an honourable attachment in her lover, seems irreconcileable with the evidence that his writings supply. 1. There is no passage in Petrarch, whether of poetry or prose, that alludes to the virgin character of Laura, or gives her the usual appellations of unmarried women, puella in Latin, or donzella in Italian; even in the Trionfo della Castità, where so obvious an opportunity occurred. Yet this was naturally to be expected from so ethereal an imagination as that of Petrarch, always inclined to invest her with the halo of celestial purity. We know how Milton took hold of the mystical notions of virginity; notions more congenial to the religion of Petrarch than his own:

Quod tibi perpetuus pudor, et sine labe juventas
Pura fuit, quod nulla tori libata voluptas,
En etiam tibi virginei servantur honores.
Epitaphium Damonis.

2. The coldness of Laura towards so passionate and deserving a lover, if no insurmountable obstacle intervened during his twenty years of devotion, would be at least a mark that his attachment was misplaced, and shew him in rather a ridiculous light. It is not surprizing, that persons believing Laura to be unmarried, as seems to have been the case with the Italian commentators, should have thought his passion affected and little more than poetical. But upon the contrary supposition, a thread runs through the whole of his poetry, and gives it consistency. A love on the one side, instantaneously conceived, and retained by the susceptibility of a tender heart and ardent fancy; nourished by slight encouragement, and seldom presuming to

doubtedly not capable of a moral defence; nor would I seek its palliation so much in the prevalent manners of his age, by which however the

hope for more; a mixture of prudence and coquetry on the other, kept within bounds either by virtue or by the want of mutual attachment, yet not dissatisfied with fame more brilliant and flattery more refined than had ever before been the lot of woman—these are surely pretty natural circumstances, and such as do not render the story less intelligible. Unquestionably, such a passion is not innocent. But Lord Woodhouselee, who is so much scandalized at it, knew little, one would think, of the fourteenth century. His standard is taken not from Avignon, but from Edinburgh, a much better place, no doubt, and where the moral barometer stands at a very different altitude. In one passage, p. 188. he carries his strictness to an excess of prudery. From all we know of the age of Petrarch, the only matter of astonishment is the persevering virtue of Laura. The troubadours boast of much better success with Provençal ladies. 3. But the following passage from Petrarch's dialogues with St. Augustin, the work, as is well known, where he most unbosoms himself, will leave no doubt, I think, that his passion could not have been gratified consistently with honour. At mulier ista celebris, quam tibi certissimam ducem fingis, ad superos cur non hæsitantem trepidumque direxerit, et quod cæcis fieri solet, manu apprehensum non tenuit, quò et gradiendum foret admonuit? PETR. Fecit hoc illa quantum potuit. Quid enim aliud egit, cum nullis mota precibus, nullis victa blanditiis, muliebrem tenuit decorem; et adversus suam semel et meam ætatem, adversus multa et varia quæ flectere adamantium spiritum debuissent, inexpugnabilis et firma permansit? Profectò animus iste fœmineus quid virum decuit admonebat, præstabatque ne in sectando pudicitiæ studio, ut verbis utar Senecæ, aut exemplum aut convitium deesset; postremò cum lorifragum ac præcipitem videret, deserere maluit potius quàm sequi. AUGUST. Turpe igitur aliquid interdum voluisti, quod supra negaveras. At iste vulgatus amantium, vel, ut dicam verius, amentium furor est, ut omnibus meritò dici possit: volo, nolo, nolo volo. Vobis ipsis quid velitis, aut nolitis, ignotum est. PET. Invitus in laqueum offendi. Si quid tamen olim aliter forte voluissem, amor ætasque coëgerunt; nunc quid velim et cupiam scio, firmavique jam tandem animum labentem; contra autem illa propositi tenax et semper una permansit, quare constantiam fœmineam, quò magis intelligo, magis admiror: idque sibi consilium fuisse, si unquam debui, gaudeo nunc et gratias ago. AUG. Semel fallenti, non facile rursus fides habenda est: tu prius mores atque habitum, vitamque mutavisti quàm animum mutâsse persuadeas; mitigatur forte si tuus leniturque ignis, extinctus non est. Tu verò qui tantum dilectioni tribuis, non animadvertis, illam absolvendo, quantum te ipse condemnas; illam fateri libet fuisse sanctissimam, dum te insanum scelestumque fateare.—De Contemptu Mundi, Dialog. 3. p. 357. edit. 1581.

conduct of even good men is generally not a little influenced, as in the infirmity of Petrarch's character, which induced him both to obey and to justify the emotions of his heart. The lady too, whose virtue and prudence we are not to question, seems to have tempered the light and shadow of her countenance so as to preserve her admirer from despair, and consequently to prolong his sufferings and servitude.

The general excellencies of Petrarch are his command over the music of his native language, his correctness of style, scarcely two or three words that he has used having been rejected by later writers, his exquisite elegance of diction, improved by the perpetual study of Virgil; but, far above all, that tone of pure and melancholy sentiment, which has something in it unearthly, and forms a striking contrast to the amatory poems of antiquity. Most of these are either licentious or uninteresting; and those of Catullus, a man endowed by nature with deep and serious sensibility, and a poet, in my opinion, of greater and more varied genius than Petrarch, are contaminated, above all the rest, with the most degrading grossness. Of this there is not a single instance in the poet of Vaucluse; and his strains, diffused and admired as they have been, may have conferred a benefit that criticism cannot estimate, in giving elevation and refinement to the imaginations of youth. The great defect of Petrarch was his want of strong original conception, which prevented him from throwing off the affected and

over-strained manner of the Provençal troubadours, and of the earlier Italian poets. Among his poems, the Triumphs are perhaps superior to the Odes, as the latter are to the Sonnets; and of the latter, those written subsequently to the death of Laura are in general the best. But that constrained and laborious measure cannot equal the graceful flow of the canzone, or the vigorous compression of the terza rima. The Triumphs have also a claim to superiority, as the only poetical composition of Petrarch that extends to any considerable length. They are in some degree, perhaps, an imitation of the dramatic Mysteries, and form at least the earliest specimen of a kind of poetry not uncommon in later times, wherein real and allegorical personages are intermingled in a masque or scenic representation.

English language.

None of the principal modern languages was so late in its formation, or in its application to the purposes of literature, as the English. This arose, as is well known, out of the Saxon branch of the great Teutonic stock, spoken in England till after the conquest. From this mother dialect, our English differs less in respect of etymology, than of syntax, idiom and flexion. In so gradual a transition as probably took place, and one so sparingly marked by any existing evidence, we cannot well assign a definite origin to our present language. The question of identity is almost as perplexing in languages as in individuals. But, in the reign of Henry II., a version of Wace's poem of Brut, by one Layamon, a priest of Ernly upon Severn,

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exhibits as it were the chrysalis of the English language, in which he can as little be said to have written, as in Anglo-Saxon.* Very soon afterwards, the new formation was better developed; and some metrical pieces, referred by critics to the earlier part of the thirteenth century, differ but little from our legitimate grammar.† About the beginning of Edward I.'s reign, Robert, a monk of Glocester, composed a metrical chronicle from the history of Geoffrey of Monmouth, which he continued to his own time. This work, with a similar chronicle of Robert Manning, a monk of Brunne (Bourne) in Lincolnshire, nearly thirty years later, stand at the head of our English poetry. The romance of Sir Tristrem, ascribed to Thomas of Erceldoune, sirnamed the Rhymer, a Scottish minstrel, has recently laid claim to somewhat higher antiquity. In the fourteenth century, a great number of metrical romances were translated from the French. It requires no small portion of indulgence to speak favourably of any of these early English productions. A poetical line may no doubt occasionally be found; but in general the narration is as heavy and prolix as the versification is unmusical.‡ The first English

Early writers.

* A sufficient extract from this work of Layamon has been published by Mr. Ellis, in his specimens of early English poetry, vol. i. p. 61. It contains, he observes, no word which we are under the necessity of ascribing to a French origin.

† Warton's Hist. of English Poetry. Ellis's Specimens.

‡ Warton printed copious extracts from some of these. Ritson gave several of them entire to the press: And Mr. Ellis has adopted the only plan which could render them palatable, by intermingling

writer, who can be read with approbation, is William Langland, the author of Piers Plowman's Vision, a severe satire upon the clergy. Though his measure is more uncouth than that of his predecessors, there is real energy in his conceptions, which he caught not from chimeras of knight-errantry, but the actual manners and opinions of his time.

Cause of its slow progress.

The very slow progress of the English language, as an instrument of literature, is chiefly to be ascribed to the effects of the Norman conquest, in degrading the native inhabitants, and transferring all power and riches to foreigners. The barons, without perhaps one exception, and a large proportion of the gentry, were of French descent, and preserved among themselves the speech of their fathers. This continued much longer than we should naturally have expected; even after the loss of Normandy had snapped the thread of French connexions, and they began to pride themselves in the name of Englishmen, and in the inheritance of traditionary English privileges, Robert of Glocester has a remarkable passage, which proves that, in his time, somewhere about 1270, the superior ranks continued to use the French language.* Ralph Higden, about the early

short passages, where the original is rather above its usual mediocrity, with his own lively analysis.

* The evidences of this general employment and gradual disuse of French in conversation and writing are collected by Tyrwhitt, in a dissertation on the ancient English language, prefixed to the fourth volume of his edition of Chaucer's Canterbury Tales; and by Ritson, in the preface to his Metrical Romances, vol. i. p. 70.

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part of Edward III.'s reign, though his expressions do not go the same length, asserts, that "gentlemen's children are taught to speak French, from the time they are rocked in their cradle; and uplandish (country or inferior) men will liken themselves to gentlemen, and learn with great business for to speak French, for to be the more told of." Notwithstanding, however, this predominance of French among the higher class, I do not think that some modern critics are warranted in concluding that they were, in general, ignorant of the English tongue. Men living upon their estates among their tenantry, whom they welcomed in their halls, and whose assistance they were perpetually needing in war and civil frays, would hardly have permitted such a barrier to obstruct their intercourse. For we cannot, at the utmost, presume that French was so well known to the English commonalty in the thirteenth century, as English is at present to the same class in Wales and the Scottish Highlands. It may be remarked also, that the institution of trial by jury must have rendered a knowledge of English almost indispensable to those who administered justice. There is a proclamation of Edward I. in Rymer, where he endeavours to excite his subjects against the king of France by imputing to him the intention of conquering the country, and abolishing the English language, (linguam delere anglicanam,) and this is frequently repeated in the proclamations of Edward III.* In his time, or

* t. v. p. 490.; t. vi. p. 642. et alibi.

perhaps a little before, the native language had become more familiar than French in common use even with the court and nobility. Hence the numerous translations of metrical romances, which are chiefly referred to his reign. An important change was effected in 1362 by a statute, which enacts that all pleas in courts of justice shall be pleaded, debated, and judged in English. But Latin was, by this act, to be employed in drawing the record; for there seems to have still continued a sort of prejudice against the use of English as a written language. The earliest English instrument known to exist is said to bear the date of 1343.* And there are not more than three or four entries in our own tongue upon the rolls of parliament before the reign of Henry VI., after whose accession its use becomes very common. Sir John Mandevile, about 1350, may pass for the father of English prose, no original work being so ancient as his travels. But the translation of the Bible and other writings by Wicliffe nearly thirty years afterwards taught us the copiousness and energy of which our native dialect was capable; and it was employed in the fifteenth century by two writers of distinguished merit, Bishop Peacock and Sir John Fortescue.

Chaucer.

But the principal ornament of our English literature was Geoffrey Chaucer, who, with Dante and Petrarch, fills up the triumvirate of great poets in the middle ages. Chaucer was born in

* Ritson, p. 80. There is one in Rymer of the year 1385.

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1328, and his life extended to the last year of the fourteenth century. That rude and ignorant generation was not likely to feel the admiration of native genius as warmly as the compatriots of Petrarch; but he enjoyed the favour of Edward III., and still more conspicuously, of John duke of Lancaster;* his fortunes were far more prosperous than have usually been the lot of poets; and a reputation was established beyond competition in his life-time, from which no succeeding generation has withheld its sanction. I cannot, in my own taste, go completely along with the eulogies that some have bestowed upon Chaucer, who seems to me to have wanted grandeur, where he is original, both in conception and in language. But in vivacity of imagination and ease of expression, he is above all poets of the middle time, and comparable perhaps to the greatest of those who have followed. He invented, or rather introduced from France, and employed with facility the regular iambic couplet; and though it was not to be expected that he should perceive the capacities latent in that measure, his versification, to which he accommodated a very licentious and arbitrary pronunciation, is uniform and harmonious.* It is chiefly, indeed, as a comic poet, and a minute observer of manners and circumstances, that

* See Tyrwhitt's essay on the language and versification of Chaucer, in the fourth volume of his edition of the Canterbury Tales. The opinion of this eminent critic has lately been controverted by Dr. Nott, who maintains the versification of Chaucer to have been wholly founded on accentual and not syllabic regularity.

Chaucer excels. In serious and moral poetry he is frequently languid and diffuse; but he springs, like Antæus from the earth, when his subject changes to coarse satire, or merry narrative. Among his more elevated compositions, the Knight's Tale is abundantly sufficient to immortalize Chaucer, since it would be difficult to find any where a story better conducted, or told with more animation and strength of fancy. The second place may be given to his Troilus and Creseide, a beautiful and interesting poem, though enfeebled by expansion. But perhaps the most eminent, or at any rate the most characteristic testimony to his genius will be found in the Prologue to his Canterbury Tales; a work entirely and exclusively his own, which can seldom be said of his poetry, and the vivid delineations of which perhaps very few writers but Shakspeare could have equalled. As the first original English poet, if we except Langland, as the inventor of our most approved measure, as an improver, though with too much innovation, of our language, and as a faithful witness to the manners of his age, Chaucer would deserve our reverence, if he had not also intrinsic claims for excellencies, which do not depend upon any collateral considerations.

Revival of ancient learning.

The last circumstance which I shall mention as having contributed to restore society from the intellectual degradation into which it had fallen during the dark ages is the revival of classical learning. The Latin language indeed, in which all legal instruments were drawn up, and of which

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all ecclesiastics availed themselves in their epistolary intercourse, as well as in their more solemn proceedings, had never ceased to be familiar. Though many solecisms and barbarous words occur in the writings of what were called learned men, they possessed a fluency of expression in Latin which does not often occur at present. During the dark ages, however, properly so called, or the period from the sixth to the eleventh century, it is unusual to meet with quotations, except from the Vulgate, or from theological writers. The study of Rome's greatest authors, especially her poets, was almost forbidden. But a change took place in the course of the twelfth century. The polite literature, as well as the abstruser science of antiquity, became the subject of cultivation. Several writers of that age, in different parts of Europe, are distinguished more or less for elegance, though not absolute purity, of Latin style; and for their acquaintance with those ancients, who are its principal models. Such were John of Salisbury, the acute and learned author of the Policraticus, William of Malmsbury, Giraldus Cambrensis, Roger Hoveden, in England; and in foreign countries, Otho of Frisingen, Saxo Grammaticus, and the best perhaps of all I have named as to style, Falcandus, the historian of Sicily. In these we meet with frequent quotations from Livy, Cicero, Pliny, and other considerable writers of antiquity. The poets were now admired, and even imitated. All metrical Latin before the

in the twelfth century:

latter part of the twelfth century, so far as I have seen, is extremely bad; but at this time, and early in the succeeding age, there appeared several versifiers, who aspired to the renown of following the steps of Virgil and Statius in epic poetry. Joseph Iscanus, an Englishman, seems to have been the earliest of these; his poem on the Trojan war containing an address to Henry II. He wrote another, entitled Antiocheis, on the third crusade, most of which has perished. The wars of Frederic Barbarossa were celebrated by Gunther in his Liguriņus; and not long afterwards, Guillelmus Brito wrote the Philippis, in honour of Philip Augustus, and Walter de Chatillon the Alexandreis, taken from the popular romances of Alexander. None of these poems, I believe, have much intrinsic merit; but their existence is a proof of taste that could relish, though not of genius, that could emulate antiquity.*

In the thirteenth century there seems to have

* Warton's Hist. of English Poetry, vol. i. Dissertation II. Roquefort, Etat de la Poésie Française du douzième Siècle, p. 16. The following lines from the beginning of the eighth book of the Philippis seem a fair, or rather a favourable specimen of these epics. But I am very superficially acquainted with any of them.

Solverat interea zephyris melioribus annum
Frigore depulso veris tepor, et renovari
Cœperat et viridi gremio juvenescere tellus;
Cum Rea læta Jovis ridere ad oscula mater,
Cum jam post tergum Phryxi vectore relicto
Solis Agenorei premeret rota terga juvenci.

The tragedy of Eccerinus, (Eccelin da Romano,) by Albertinus Mussatus, a Paduan, and author of a respectable history, deserves some attention, as the first attempt to revive the regular tragedy. It was written soon after 1300. The language by no means wants animation, notwithstanding an unskillful conduct of the fable. The Eccerinus is printed in the tenth volume of Muratori's collection.

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been some decline of classical literature, in consequence probably of the scholastic philosophy, which was then in its greatest vigour; at least we do not find so many good writers as in the preceding age. But about the middle of the fourteenth, or perhaps a little sooner, an ardent zeal for the restoration of ancient learning began to display itself. The copying of books, for some ages slowly and sparingly performed in monasteries, had already become a branch of trade;* and their price was consequently reduced. Tiraboschi denies that the invention of making paper from linen rags is older than the middle of that century; and although doubts may be justly entertained as to the accuracy of this position, yet the confidence with which so eminent a scholar advances it is at least a proof that paper manuscripts of an earlier date are very rare.† Princes

Much more in the fourteenth.

Invention of linen paper.

* Booksellers appear in the latter part of the twelfth century. Peter of Blois mentions a lawbook which he had procured a quodam publico mangone librorum. Hist. Littéraire de la France, t. ix. p. 84. In the thirteenth century there were many copyists by occupation in the Italian universities. Tiraboschi, t. iv. p. 72. The number of these at Milan before the end of that age is said to have been fifty. ibid. But a very small proportion of their labour could have been devoted to purposes merely literary. By a variety of ordinances, the first of which bears date in 1275, the booksellers of Paris were subjected to the controul of the university. Crevier, t. ii. p. 67. 286. The pretext of this was, lest erroneous copies should obtain circulation. And this appears to have been the original of those restraints upon the freedom of publication, which, since the invention of printing, have so much retarded the diffusion of truth by means of that great instrument.

† Tiraboschi, t. v. p. 85. On the contrary side are Montfaucon, Mabillon and Muratori; the latter of whom carries up the invention of our ordinary paper to the year 1000. But Tiraboschi contends that the paper used in manuscripts of so early an age was made from cotton rags, and apparently from the inferior durability of that material, not frequently employed. The editors of Nouveau Traité de

became far more attentive to literature when it was no longer confined to metaphysical theology and canon law. I have already mentioned the translations from classical authors made by command of John and Charles V. of France. These French translations diffused some acquaintance with ancient history and learning among our own countrymen.*. The public libraries assumed a more respectable appearance. Louis IX. had formed one at Paris, in which it does not appear that any work of elegant literature was found.† At the beginning of the fourteenth century, only four classical manuscripts existed in this collection; of Cicero, Ovid, Lucan, and Boethius.‡ The academical library of Oxford, in 1300, con-

Libraries.

Diplomatique are of the same opinion, and doubt the use of linen paper before the year 1300. t. i. p. 517. 521. Meerman, well known as a writer upon the antiquities of printing, offered a reward for the earliest manuscript upon linen paper, and, in a treatise upon the subject, fixed the date of its invention between 1270 and 1300. But M. Schwandner of Vienna is said to have found in the imperial library a small charter bearing the date of 1243 on such paper. Macpherson's Annals of Commerce, vol. i. p. 394. Tiraboschi, if he had known this, would probably have maintained the paper to be made of cotton, which he says it is difficult to distinguish. He assigns the invention of linen paper to Pace da Fabiano of Treviso. But more than one Arabian writer asserts the manufacture of linen paper to have been carried on at Samarcand early in the eighth century, having been brought thither from China. And, what is more conclusive, Casiri positively declares many manuscripts in the Escurial of the eleventh and twelfth centuries to be written on that substance. Bibliotheca Arabico-Hispanica, t. ii. p. 9. This authority appears much to outweigh the opinion of Tiraboschi in favour of Pace da Fabiano, who must perhaps take his place at the table of fabulous heroes with Bartholomew Schwartz and Flavio Gioja. But the material point, that paper was very little known in Europe till the latter part of the fourteenth century, remains as before.

* Warton's Hist. of English Poetry, vol. ii. p. 122.

† Velly, t. v. p. 202. Crevier, t. ii. p. 36.

‡ Warton, vol. i. Dissert. II.

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sisted of a few tracts kept in chests under St. Mary's church. That of Glastonbury Abbey, in 1248, contained four hundred volumes, among which were Livy, Sallust, Lucan, Virgil, Claudian and other ancient writers.* But no other, probably, of that age was so numerous or so valuable. Richard of Bury, chancellor of England, under Edward III., spared no expense in collecting a library, the first perhaps that any private man had formed. But the scarcity of valuable books was still so great, that he gave the abbot of St. Albans fifty pounds weight of silver for between thirty and forty volumes.†. Charles V. increased the royal library at Paris to nine hundred volumes, which the duke of Bedford purchased and transported to London.‡ His brother Humphrey duke of Glocester presented the university of Oxford with six hundred books, which seem to have been of extraordinary value, one hundred and twenty of them having been esti-

* Warton, vol. i. Dissert. II.

† ibid. Fifty-eight books were transcribed in this abbey under one abbot, about the year 1300. Every considerable monastery had a room, called Scriptorium, where this work was performed. More than eighty were transcribed at St. Albans under Whethamstede, in the time of Henry VI. ibid. See also Du Cange, v. Scriptores. Nevertheless we must remember; first, that the far greater part of these books were mere monastic trash, or at least useless in our modern apprehension; secondly, that it depended upon the character of the abbot, whether the scriptorium should be occupied or not. Every head of a monastery was not a Whethamstede. Ignorance and jollity, such as we find in Bolton Abbey, were their more usual characteristics. By the account books of this rich monastery, about the beginning of the fourteenth century, three books only appear to have been purchased in forty years. One of those was the Liber Sententiarum of Peter Lombard, which cost thirty shillings, equivalent to near forty pounds at present. Whitaker's Hist. of Craven, p. 330.

‡ ibid. Villaret, t. xi. p. 117.

mated at one thousand pounds. This indeed was in 1440; at which time such a library would not have been thought remarkably numerous beyond the Alps;* but England had made comparatively little progress in learning. Germany, however, was probably still less advanced. Louis, Elector Palatine, bequeathed in 1421, his library to the university of Heidelberg, consisting of one hundred and fifty-two volumes. Eighty-nine of these related to theology, twelve to canon and civil law, forty-five to medicine, and six to philosophy.†

Transcription of manuscripts.

Those who first undertook to lay open the stores of ancient learning found incredible difficulties from the scarcity of manuscripts. So gross and supine was the ignorance of the monks, within whose walls these treasures were concealed, that it was impossible to ascertain, except by indefatigable researches, the extent of what had been saved out of the great shipwreck of antiquity. To this inquiry Petrarch devoted continual attention. He spared no pains to preserve the remains of authors, who were perishing from neglect and time. This danger was by no means passed in the fourteenth century. A treatise of Cicero upon Glory,

* Niccolo Niccoli, a private scholar, who contributed essentially to the restoration of ancient learning, bequeathed a library of eight hundred volumes to the republic of Florence. This Niccoli hardly published any thing of his own; but earned a well-merited reputation by copying and correcting manuscripts. Tiraboschi, t. vi. p. 114. Shepherd's Poggio, p. 319. In the preceding century, Coluccio Salutato had procured as many as eight hundred volumes. ibid. p. 32. Roscoe's Lorenzo de' Medici, p. 55.

† Schmidt, Hist. des Allemands, t. v. p. 520.

which had been in his possession, was afterwards irretrievably lost.* He declares that he had seen in his youth the works of Varro; but all his endeavours to recover these and the second Decad of Livy were fruitless. He found, however, Quintilian, in 1350, of which there was no copy in Italy.† Boccaccio, and a man of less general fame, Coluccio Salutato, were distinguished in the same honourable task. The diligence of these scholars was not confined to searching for manuscripts. Transcribed by slovenly monks, or by ignorant persons who made copies for sale, they required the continual emendation of accurate critics.‡ Though much certainly was left for the more enlightened sagacity of later times, we owe the first intelligible text of the Latin classics to Petrarch, Poggio, and their contemporary labourers in this vineyard for a hundred years before the invention of printing.

Industry of the fifteenth century.

What Petrarch began in the fourteenth century was carried on by a new generation with unabating industry. The whole lives of Italian scholars in the fifteenth century were devoted to the recovery of manuscripts and the revival of philology. For this they sacrificed their native language, which had made such surprizing shoots in the preceding age, and were content to trace, in humble reverence, the footsteps of antiquity. For this too

* He had lent it to a needy man of letters, who pawned the book, which was never recovered. De Sade, t. i. p. 57.

† Tiraboschi, p. 89.

‡ Idem, t. v. p. 83. De Sade, t. i. p. 88.

they lost the hope of permanent glory, which can never remain with imitators, or such as trim the lamp of ancient sepulchres. No writer perhaps of the fifteenth century, except Politian, can aspire at present even to the second class, in a just marshalling of literary reputation. But we owe them our respect and gratitude for their taste and diligence. The discovery of an unknown manuscript, says Tiraboschi, was regarded almost as the conquest of a kingdom. The classical writers, he adds, were chiefly either found in Italy, or at least by Italians; they were first amended and first printed in Italy, and in Italy they were first collected in public libraries.* This is subject to some exception, when fairly considered; several ancient authors were never lost, and therefore cannot be said to have been discovered; and we know that Italy did not always anticipate other countries in classical printing. But her superior merit is incontestable. Poggio Bracciolini, who stands perhaps at the head of the restorers of learning, in the earlier part of the fifteenth century, discovered in the monastery of St. Gall, among dirt and rubbish, in a dungeon scarcely fit for condemned criminals, as he describes it, an entire copy of Quintilian, and part of Valerius Flaccus. This was in 1414; and soon afterwards, he rescued the poem of Silius Italicus, and twelve comedies of Plautus, in addition to eight that were previously known; besides Lucretius, Columella, Tertullian, Ammianus Marcel-

Poggio.

* Tiraboschi, p. 101.

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linus, and other writers of inferior note.* A bishop of Lodi brought to light the rhetorical treatises of Cicero. Not that we must suppose these books to have been universally unknown before; Quintilian, at least, is quoted by English writers much earlier. But so little intercourse prevailed among different countries, and the monks had so little acquaintance with the riches of their conventual libraries, that an author might pass for lost in Italy, who was familiar to a few learned men in other parts of Europe. To the name of Poggio we may add a number of others, distinguished in this memorable resurrection of ancient literature, and united, not always indeed by friendship, for their bitter animosities disgrace their profession, but by a sort of common sympathy in the cause of learning; Filelfo, Laurentius Valla, Niccolo Niccoli, Ambrogio Traversari, more commonly called il Camaldolense, and Leonardo Aretino.

Greek language unknown in the west.

From the subversion of the Western Empire, or at least from the time when Rome ceased to pay obedience to the exarchs of Ravenna, the Greek language and literature had been almost entirely forgotten within the pale of the Latin church. A very few exceptions might be found, especially in the earlier period of the middle ages, while the eastern emperors retained their dominion over part of Italy.† Thus Charlemagne is said to have es-

* Tiraboschi, t. vi. p. 104.; and Shepherd's Life of Poggio, p. 106. 110. Roscoe's Lorenzo de' Medici, p. 38.

† Schmidt, Hist. des Allemands, t. ii. p. 374. Tiraboschi, t. iii. p. 124. et alibi. Bede extols Theodore primate of Canterbury

tablished a school for Greek at Osnabrug.* John Scotus seems to have been well acquainted with the language. And Greek characters may occasionally, though very seldom, be found in the writings of learned men; such as Lanfranc or William of Malmsbury.† It is said that Roger Bacon understood Greek; and his eminent contemporary, Robert Grostete, bishop of Lincoln, had a sufficient intimacy with it to write animadversions upon

and Tobias bishop of Rochester for their knowledge of Greek. Hist. Eccles. c. 9. and 24. But the former of these prelates, if not the latter, was a native of Greece.

* Hist. Littéraire de la France, t. iv. p. 12.

† Greek characters are found in a charter of 943, published in Martenne, Thesaurus Anecdot. t. i. p. 74. The title of a treatise, περι φυσεων μερισμων, and the word θεολόκος, occur in William of Malmsbury, and one or two others in Lanfranc's Constitutions. It is said that a Greek psalter was written in an abbey at Tournay about 1105. Hist. Litt. de la France, t. ix. p. 102. This was, I should think, a very rare instance of a Greek manuscript, sacred or profane, copied in the western parts of Europe before the fifteenth century. But a Greek psalter written in Latin characters at Milan in the ninth century was sold some years ago in London. John of Salisbury is said by Crevier to have known a little Greek, and he several times uses technical words in that language. Yet he could not have been much more learned than his neighbours; since having found the word ουσια in St. Ambrose, he was forced to ask the meaning of one John Sarasin an Englishman, because, says he, none of our masters here (at Paris) understand Greek. Paris, indeed, Crevier thinks, could not furnish any Greek scholar in that age except Abelard and Heloise, and probably neither of them knew much. Hist. de l'Univers. de Paris, t. i. p. 259.

The ecclesiastical language, it may be observed, was full of Greek words latinized. But this process had taken place before the fifth century; and most of them will be found in the Latin dictionaries. A Greek word was now and then borrowed, as more imposing than the correspondent Latin. Thus the English and other kings sometimes called themselves Basileus, instead of Rex.

It will not be supposed, that I have professed to enumerate all the persons, of whose acquaintance with the Greek tongue some evidence may be found; nor have I ever directed my attention to the subject with that view. Doubtless the list might be more than doubled. But, if ten times the number could be found, we should still be entitled to say, that the language was almost unknown, and that it could have had no influence on the condition of literature.

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Suidas. Since Greek was spoken with considerable purity by the noble and well educated natives of Constantinople, we may wonder that, even as a living language, it was not better known by the western nations, and especially in so neighbouring a nation as Italy. Yet here the ignorance was perhaps even more complete than in France or England. In some parts indeed of Calabria, which had been subject to the eastern empire till near the year 1100, the liturgy was still performed in Greek; and a considerable acquaintance with the language was of course preserved. But for the scholars of Italy, Boccaccio positively asserts, that no one understood so much as the Greek characters.* Nor is there probably a single line quoted from any poet in that language from the sixth to the fourteenth century.

Its study revives in the fourteenth century.

The first to lead the way in restoring Grecian learning in Europe were the same men who had revived the kindred muses of Latium, Petrarca and Boccaccio. Barlaam, a Calabrian by birth, during an embassy from the court of Constantinople in 1335, was persuaded to become the preceptor of the former, with whom he read the works of Plato.† Leontius Pilatus, a native of Thessalonica, was encouraged some years afterwards by Boccaccio to give public lectures upon Homer at

* Nemo est qui Græcas literas nôrit; at ego in hoc Latinitati compatior, quæ sic omnino Græca abjecit studia, ut etiam non noscamus characteres literarum. Genealogiæ Deorum, apud Hodium de Græcis Illustribus, p. 3.

† Mem. de Pétrarque, i. p. 407.

Florence.* Whatever might be the share of general attention that he excited, he had the honour of instructing both these great Italians in his native language. Neither of them perhaps reached an advanced degree of proficiency; but they bathed their lips in the fountain, and enjoyed the pride of being the first who paid the homage of a new posterity to the father of poetry. For some time little fruit apparently resulted from their example; but Italy had imbibed the desire of acquisitions in a new sphere of knowledge, which, after some interval, she was abundantly enabled to realize. A few years before the termination of the fourteenth century, Emanuel Chrysoloras, whom the emperor John Palæologus had previously sent into Italy, and even as far as England, upon one of those unavailing embassies by which the Byzantine court strove to obtain sympathy and succour from Europe, returned to Florence as a public teacher of Grecian literature.† His school was afterwards removed successively to Pavia, Venice and Rome; and during nearly twenty years that he taught in Italy, most of those eminent scholars, whom I have already named, and who distinguish the first half of that century,

* Mem. de Pétrarque, t. i. p. 447.; t. iii. p. 634. Hody de Græcis Illust. p. 2. Boccace speaks modestly of his own attainments in Greek: etsi non satis plenè perceperim, percepi tamen quantum potui; nec dubium, si permansisset homo ille vagus diutius penes nos, quin plenius percepissem. id. p. 4.

† Hody places the commencement of Chrysoloras's teaching as early as 1391. p. 3. But Tiraboschi, whose research was more precise, fixes it at the end of 1396 or beginning of 1397. t. vii. p. 126.

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derived from his instruction their knowledge of the Greek tongue. Some, not content with being the disciples of Chrysoloras, betook themselves to the source of that literature at Constantinople; and returned to Italy, not only with a more accurate insight into the Greek idiom than they could have attained at home, but with copious treasures of manuscripts, few, if any, of which can have existed previously in Italy, where none had ability to read or value them; so that the principal authors of Grecian antiquity may be considered as brought to light by these inquirers, the most celebrated of whom are Guarino of Verona, Aurispa, and Filelfo. The second of these brought home to Venice in 1423 not less than two hundred and thirty-eight volumes.*

State of learning in Greece.

The fall of that eastern empire, which had so long out-lived all other pretensions to respect, that it scarcely retained that founded upon its antiquity, seems to have been providentially delayed, till Italy was ripe to nourish the scattered seeds of literature that would have perished a few ages earlier in the common catastrophe. From the commencement of the fifteenth century, even the national pride of Greece could not blind her to the signs of approaching ruin. It was no longer possible to inspire the European republic, distracted by wars and restrained by calculating policy, with the generous fanaticism of the crusades; and at the council of Florence, in 1439, the

* Tiraboschi, t. vi. p. 102. Roscoe's Lorenzo de' Medici, vol. i. p. 43.

court and church of Constantinople had the mortification of sacrificing their long-cherished faith, without experiencing any sensible return of protection or security. The learned Greeks were perhaps the first to anticipate, and certainly not the last to avoid their country's destruction. The council of Florence brought many of them into Italian connexions, and held out at least a temporary accommodation of their conflicting opinions. Though the Roman pontiffs did nothing, and probably could have done nothing effectual for the empire of Constantinople, they were very ready to protect and reward the learning of individuals. To Eugenius IV., to Nicolas V., to Pius II., and some other popes of this age, the Greek exiles were indebted for a patronage which they repaid by splendid services in the restoration of their native literature throughout Italy. Bessarion, a disputant on the Greek side in the council of Florence, was well content to renounce the doctrine of single procession for a cardinal's hat; a dignity which he deserved for his learning, if not for his pliancy. Theodore Gaza, George of Trebizond, and Gemistus Pletho might equal Bessarion in merit, though not in honours. They all however experienced the patronage of those admirable protectors of letters, Nicolas V., Cosmo de' Medici, or Alfonso king of Naples. These men emigrated before the final destruction of the Greek empire; Lascaris and Musurus, whose arrival in Italy was posterior to that event, may be deemed perhaps still more conspicuous; but as the study of the

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Greek language was already restored, it is unnecessary to pursue the subject any farther.

The Greeks had preserved, through the course of the middle ages, their share of ancient learning with more fidelity and attention than was shewn in the west of Europe. Genius indeed, or any original excellence, could not well exist along with their cowardly despotism and their contemptible theology, more corrupted by frivolous subtleties than that of the Latin church. The spirit of persecution, naturally allied to despotism and bigotry, had nearly during one period, extinguished the lamp, or at least reduced the Greeks to a level with the most ignorant nations of the west. In the age of Justinian, who expelled the last Platonic philosophers, learning began rapidly to decline; in that of Heraclius, it had reached a much lower point of degradation; and for two centuries, especially while the worshippers of images were persecuted with unrelenting intolerance, there is almost a blank in the annals of Grecian literature.* But about the middle of the

* The authors most conversant with Byzantine learning agree in this. Nevertheless, there is one manifest difference between the Greek writers of the worst period, such as the eighth century, and those who correspond to them in the west. Syncellus, for example, is of great use in chronology, because he was acquainted with many ancient histories now no more. But Bede possessed nothing which we have lost; and his compilations are consequently altogether unprofitable. The eighth century, the sæculum iconoclasticum of Cave, low as it was in all polite literature, produced one man, St. John Damascenus, who has been deemed the founder of scholastic theology, and who at least set the example of that style of reasoning in the east. This person, and Michael Psellus, a philosopher of the eleventh century, are the only considerable men, as original writers, in the annals of Byzantine literature.

ninth century, it revived pretty suddenly, and with considerable success.* Though, as I have observed, we find in very few instances any original talent, yet it was hardly less important to have had compilers of such erudition as Photius, Suidas, Eustathius and Tzetzes. With these certainly the Latins of the middle ages could not place any names in comparison. They possessed, to an extent which we cannot precisely appreciate, many of those poets, historians and orators of ancient Greece, whose loss we have long regretted, and must continue to deem irretrievable. Great havoc however was made in the libraries of Constantinople at its capture by the Latins; an epoch from which a rapid decline is to be traced in the literature of the eastern empire. Solecisms and barbarous terms, which sometimes occur in the older Byzantine writers, are said to deform the style of the fourteenth and fifteenth centuries.† The Turkish ravages and destruction of

* The honour of restoring ancient or heathen literature is due to the Cæsar Bardas, uncle and minister of Michael II. Cedrenus speaks of it in the following terms: επεμελη θη δε και της εξω σοφιας, (ην γαρ εκ πολλου χρονου παραρρυεισα, και προς το μηδεν ὁλως χωρησασα τῃ των κρατουντων αργιᾳ και αμαθιᾳ) διατριβας ἑκαστῃ των επιστημων αφορισας, των μεν αλλων ὁπῃ περ ἐτυχε, της δ' επι πασων εποχου φιλοσοφιας κατ' αυτα τα βασιλεια εν τῃ Μαγναυρᾳ· και ὕτω ἐξ εκεινου ανηβασκειν ἀι επιστημαι ηρξαντο. κ. τ. λ. Hist. Byzant. Script. (Lutet.) t. x. p. 547. Bardas found out and promoted Photius, afterwards patriarch of Constantinople, and equally famous in the annals of the church and of learning. Gibbon passes perhaps too rapidly over the Byzantine literature, chap. 53. In this, as in many other places, the masterly boldness and precision of his outline, which astonish those who have trodden parts of the same field, are apt to escape an uninformed reader.

† Du Cange, Præfatio ad Glossar. Græcitatis Medii Ævi. Anna Comnena quotes some popular lines, which seem to be the earliest specimen extant of the Romaic dialect, or something approaching it, as they observe no grammatical inflexion and bear

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monasteries ensued; and in the cheerless intervals of immediate terror, there was no longer any encouragement to preserve the monuments of an expiring language and of a name that was to lose its place among nations.*

about the same resemblance to ancient Greek that the worst law-charters of the ninth and tenth centuries do to pure Latin. In fact, the Greek language seems to have declined much in the same manner as the Latin did, and almost at as early a period. In the sixth century, Damascius, a Platonic philosopher, mentions the old language as distinct from that which was vernacular, *την αρχαιαν γλωτταν ὑπερ την ιδιωτην μελετωσι.* Du Cange, ibid. p. 11. It is well known that the popular, or *political* verses of Tzetzes, a writer of the twelfth century, are accentual; that is, are to be read, as the modern Greeks do, by treating every acute or circumflex syllable as long, without regard to its original quantity. This innovation, which must have produced still greater confusion of metrical rules than it did in Latin, is much older than the age of Tzetzes; if, at least, the editor of some notes subjoined to Meursius's edition of the Themata of Constantine Porphyrogenitus (Lugduni, 1617) is right in ascribing certain political verses to that emperor, who died in 959. These verses are regular accentual trochaics. But I believe they have since been given to Constantine Manasses, a writer of the eleventh century.

According to the opinion of a modern traveller, (Hobhouse's Travels in Albania, letter 33,) the chief corruptions which distinguish the Romaic from its parent stock, especially the auxiliary verbs, are not older than the capture of Constantinople by Mahomet II. But it seems difficult to obtain any satisfactory proof of this; and the auxiliary verb is so natural and convenient, that the ancient Greeks may probably, in some of their local idioms, have fallen into the use of it; as Mr. H. admits they did with respect to the future auxiliary *θελω*. See some instances of this in Lesbonax *περι σχηματων*, ad finem Ammonii, curâ Valckenaër.

* Photius (I write on the authority of M. Heeren) quotes Theopompus, Arrian's history of Alexander's successors, and of Parthia, Ctesias, Agatharcides, the whole of Diodorus Siculus, Polybius, and Dionysius of Halicarnassus, twenty lost orations of Demosthenes, almost two hundred of Lysias, sixty-four of Isæus, above fifty of Hyperides. Heeren ascribes the loss of these works altogether to the Latin capture of Constantinople, no writer subsequent to that time having quoted them. Essai sur les Croisades, p. 413. It is difficult however not to suppose, that some part of the destruction was left for the Ottomans to perform. Æneas Sylvius bemoans, in his speech before the diet of Frankfort, the vast losses of literature by the recent subversion of the Greek empire. Quid de libris dicam, qui illic erant innumerabiles, nondum Latinis cogniti? . . . . . Nunc ergo, et Homero et Pindaro et *Menandro*

Literature not much improved beyond Italy.

That ardour for the restoration of classical literature which animated Italy in the first part of the fifteenth century was by no means common to the rest of Europe. Neither England, nor France, nor Germany seemed aware of the approaching change. We are told that learning, by which I believe is only meant the scholastic ontology, had begun to decline at Oxford from the time of Edward III.* And the fifteenth century, from whatever cause, is particularly barren of writers in the Latin language. The study of Greek was only introduced by Grocyn and Linacer under Henry VII. and met with violent opposition in the university of Oxford, where the unlearned party styled themselves Trojans, as a pretext for abusing and insulting the scholars.† Nor did any classical work proceed from the respectable press of Caxton. France, at the beginning of the fifteenth age, had several eminent theologians; but the reigns of Charles VII. and Louis XI. contributed far more to her political than her literary renown.

et omnibus illustrioribus poetis, secunda mors erit. But nothing can be inferred from this declamation, except, perhaps, that he did not know whether Menander still existed or not. Æn. Sylv. Opera, p. 715.; also p. 881. Harris's Philological Inquiries, part iii. c. 4. It is a remarkable proof, however, of the turn which Europe, and especially Italy, was taking, that a pope's legate should, on a solemn occasion, descant so seriously on the injury sustained by profane literature.

An useful summary of the lower Greek literature, taken chiefly from the Bibliotheca Græca of Fabricius, will be found in Berington's Literary History of the Middle Ages, Appendix I.; and one rather more copious in Schœll, Abrégé de la Littérature Grecque, (Paris, 1812.

* Wood's Antiquities of Oxford, vol. i. p. 537.

† Roper's Vita Mori, ed. Hearne, p. 75.

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A Greek professor was first appointed at Paris in 1458, before which time the language had not been publicly taught, and was little understood.* Much less had Germany thrown off her ancient rudeness. Æneas Sylvius indeed, a deliberate flatterer, extols every circumstance in the social state of that country; but Campano, the papal legate at Ratisbon in 1471, exclaims against the barbarism of a nation, where very few possessed any learning, none any elegance.† Yet the progress of intellectual cultivation, at least in the two former countries, was uniform, though silent; libraries became more numerous, and books, after the happy invention of paper, though still very scarce, might be copied at less expense. Many colleges were founded in the English as well as foreign universities during the fourteenth and fifteenth centuries. Nor can I pass over institutions that have so eminently contributed to the literary reputation of this country, and that still continue to exercise so conspicuous an influence over her taste and knowledge, as the two great schools of grammatical learning, Winchester and Eton; the

* Crevier, t. iv. p. 243.; see too p. 46.

† Incredibilis ingeniorum bàrbaries est; rarissimi literas nôrunt, nulli elegantiam. Papiensis Epistolæ, p. 377. Campano's notion of elegance was ridiculous enough. Nobody ever carried farther the pedantic affectation of avoiding modern terms in his latinity. Thus, in the life of Braccio da Montone, he renders his meaning almost unintelligible by excess of classical purity. Braccio boasts se nunquam deorum immortalium témpla violâsse. Troops committing outrages in a city are accused virgines vestales incestâsse. In the terms of treaties, he employs the old Roman forms; exercitum trajicito—oppida pontificis sunto, &c. And with a most absurd pedantry, the ecclesiastical state is called Romanum imperium. Campani Vita Braccii, in Muratori Script. Rer. Ital. t. xix.

one founded by William of Wykeham, bishop of Winchester, in 1373; the other, in 1432, by King Henry the Sixth.*

Invention of printing.

But while the learned of Italy were eagerly exploring their recent acquisitions of manuscripts, decyphered with difficulty, and slowly circulated from hand to hand, a few obscure Germans had gradually perfected the most important discovery recorded in the annals of mankind. The invention of printing, so far from being the result of philosophical sagacity, does not appear to have been suggested by any regard to the higher branches of literature, or to bear any other relation than that of coincidence to their revival in Italy. The question, why it was struck out at that particular time, must be referred to that disposition of unknown causes which we call accident. Two or three centuries earlier, we cannot but acknowledge, the discovery would have been almost equally acceptable. But the invention of paper seems to have naturally preceded those of engraving and printing. It is generally agreed, that playing cards, which have been traced far back in the fourteenth century, gave the first notion of taking off impressions from engraved figures upon wood. The second stage, or rather

* A letter from Master William Paston at Eton (Paston Letters, vol. i. p. 299.) proves that Latin versification was taught there as early as the beginning of Edward IV.'s reign. It is true that the specimen he rather proudly exhibits does not much differ from what we denominate nonsense verses. But a more material observation is that the sons of country gentlemen living at a considerable distance were already sent to public schools for grammatical education.

second application of this art, was the representation of saints and other religious devices, several instances of which are still extant. Some of these are accompanied with an entire page of illustrative text, cut into the same wooden block. This process is indeed far removed from the invention that has given immortality to the names of Fust, Schœffer and Guttenberg, yet it probably led to the consideration of means whereby it might be rendered less operose and inconvenient. Whether moveable wooden characters were ever employed in any entire work is very questionable; the opinion that referred their use to Laurence Coster of Haarlem not having stood the test of more accurate investigation. They appear, however, in the capital letters of some early printed books. But no expedient of this kind could have fulfilled the great purposes of this invention, until it was perfected by founding metal types in a matrix or mould, the essential characteristic of printing, as distinguished from other arts that bear some analogy to it.

The first book that issued from the presses of Fust and his associates at Mentz was an edition of the Vulgate, commonly called the Mazarine Bible, a copy having been discovered in the library that owes its name to Cardinal Mazarin at Paris. This is supposed to have been printed between the years 1450 and 1455.* In 1457 an edition of the

* De Bure, t. i. p. 30. Several copies of this book have come to light since its discovery.

Psalter appeared, and in this the invention was announced to the world in a boasting colophon, though certainly not unreasonably bold.* Another edition of the Psalter, one of an ecclesiastical book, Durand's account of liturgical offices, one of the Constitutions of Pope Clement V., and one of a popular treatise on general science, called the Catholicon, fill up the interval till 1462, when the second Mentz Bible proceeded from the same printers.† This, in the opinion of some, is the earliest book in which cast types were employed; those of the Mazarine Bible having been cut with the hand. But this is a controverted point. In 1465, Fust and Schœffer published an edition of Cicero's Offices, the first tribute of the new art to polite literature. Two pupils of their school, Sweynheim and Pannartz, migrated the same year into Italy, and printed Donatus's grammar, and the works of Lactantius, at the monastery of Subiaco in the neighbourhood of Rome.‡ Venice had the honour of extending her patronage to John of Spira, the first who applied the art on an extensive scale to the publication of classical writers.§ Several Latin authors came forth from his press in 1470; and during the next ten years, a multitude of editions were published in various

* De Bure, t. i. p. 71.

† Mém. de l'Acad. des Inscriptions, t. xiv. p. 265. Another edition of the Bible is supposed to have been printed by Pfister at Bamberg in 1459.

‡ Tiraboschi, t. vi. p. 140.

§ Sanuto mentions an order of the senate in 1469, that John of Spira should print the epistles of Tully and Pliny for five years, and that no one else should do so. Script. Rerum Italic. t. xxii. p. 1189.

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parts of Italy. Though, as we may judge from their present scarcity, these editions were by no means numerous in respect of impressions, yet, contrasted with the dilatory process of copying manuscripts, they were like a new mechanical power in machinery, and gave a wonderfully accelerated impulse to the intellectual cultivation of mankind. From the æra of these first editions proceeding from the Spiras, Zarot, Janson, or Sweynheim and Pannartz, literature must be deemed to have altogether revived in Italy. The sun was now fully above the horizon, though countries less fortunately circumstanced did not immediately catch his beams, and the restoration of ancient learning in France and England cannot be considered as by any means effectual even at the expiration of the fifteenth century. At this point, however, I close the present chapter. The last twenty years of the middle ages, according to the date which I have fixed for their termination in treating of political history, might well invite me by their brilliancy to dwell upon that golden morning of Italian literature. But, in the history of letters, they rather appertain to the modern than the middle period; nor would it become me to trespass upon the exhausted patience of my readers by repeating what has been so often and so recently told, the story of art and learning, that has employed the comprehensive research of a Tiraboschi, a Ginguené, and a Roscoe.

THE END.

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